SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 1, Original.

THE STATE OF MARYLAND, COMPLAINANT,

vs.

THE STATE OF WEST VIRGINIA.

IN EQUITY.

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George E. Price.....	3289	1946
Julius K. Monroe.....	3290	1947
Notary's certificate.....	3295	1950
Stipulation to take testimony.....	3296	1951
J. K. Monroe Exhibit X—Map.....	3296	1951
Price Exhibit A—Journal, 1746, from head of Rappahannock to head of Potomac, running Fairfax boundary.....	3297	1952
Copy of Maryland patent to George Templeman and James W. McCulloh for "Siege of Acre".....	3333	1972
Copy of Maryland patent to same parties for "Troas".....	3336	1974

	Original.	Print.
Copy of deed, Sarah Friend *et als.* to John H. Friend.....	3339	1976
Copy of deed, John H. Friend to Melville G. Friend.....	3342	1978
Copy of deed, Mary C. Loar to Preston Lumber & Coal Co.....	3344	1979
Copy of deed, Mary E. Kunkle, &c., to Albert Lewis *et als.*.....	3347	1981
Patent of Commonwealth of Virginia to Dan Griffith for 31 acres.....	3353	1985
Supplemental report of Julius K. Monroe, surveyor, in this cause.....(omitted in printing)..	3355	—
1 Hening's Statutes at Large, pp. 230 to 236, Laws of Virginia—Declaration against the company...	3404	1986

1 At the Capitol of the United States, in the City of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the twelfth day of the same month), in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth, the Supreme Court of the United States met agreeably to law.

2 And afterwards, to wit, on the 7th day of December, A. D. 1891, the following entry appears of record, viz:

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

Mr. William Pinkney Whyte, of counsel for the complainant, submitted to the consideration of the Court a motion for leave to file a bill of complaint herein and that the proper process
3 issue. Which said motion is in the words and figures following, viz:

4 In the Supreme Court of the United States.

Original, No. —.

THE STATE OF MARYLAND
v.
THE STATE OF WEST VIRGINIA.

Now comes William Pinkney Whyte Attorney General of the State of Maryland and moves the Court for leave to file its bill in Equity against the State of West Virginia & that proper process may issue thereon.

WILLIAM PINKNEY WHYTE,
Att'y Gen. of Maryland.

December 7, 1891.

(Endorsed:) Supreme Court, U. S., 1891 October Term. No. 12, Original. The State of Maryland Complainant, *vs.* The State of West Va. Motion for leave to file Bill of Complaint. Office Supreme Court U. S., Filed Dec. 7, 1891. James H. McKenney, Clerk.

5 And afterwards, to wit, on the 14th day of December, A. D. 1891, the following order was entered of record, viz:

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6 Supreme Court of the United States.

No. —, Original, October Term, 1891.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On consideration of the motion for leave to file a bill of complaint herein,

It is now here ordered by the court that said motion be, and the same is hereby, granted, and that subpœnas to the defendant issue, returnable on the first Monday of March next.

December 14, 1891.

(Endorsed:) Sup. Court U. S., 1891. Oct. Term, No. 12 Or'g'l. The State of Maryland *vs.* State of West Va. Order granting motion for leave to file bill.

7 And on the same day, towit, on the 14th day of December, A. D. 1891, the bill of complaint was filed in the words and figures following, viz:

8 In the Supreme Court of the United States.

Original, No. —.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

Bill in Chancery.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of Maryland, by William Pinkney Whyte, its Attorney General, brings this, its bill against the State of West Virginia, and respectfully complaining, shows unto this Honorable Court that, heretofore, on the 20th June, 1632, Charles I, King of England, &c., granted unto Cecilius, Baron of Baltimore, a charter, giving to him dominion over the territories described in it, and made him Governor of the Colony, afterwards planted there, with succession to his heirs-at-law. Under this charter, possession was taken by the grantee, and jurisdiction exercised thereunder until the Revolution, when Maryland became a Sovereign State and a member of the American Union,

9 and all the rights, proprietary as well as political, previously granted under the charter, became vested in the State of Maryland.

Virginia, by her first Constitution, as a free State, (June 29, 1776,) disclaimed all rights of property, jurisdiction and government over

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the territories, contained within the charters of Maryland and other colonies, in these words, viz.:

"The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pokomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon." Va. Const., 1776, Art. 21.

The first Constitutional Convention of Maryland, (October, 1776,) adopted the following resolution:

"Resolved, unanimously, that it is the opinion of this Convention that the State of Virginia hath not any right or title to any of the territory, bays, rivers or waters included in the charter granted by his majesty Charles I, to Cecilius Calvert, Baron of Baltimore." Jour. of Convention.

That both the States of Maryland and Virginia thus admitted that they were bound by the King's charter to Lord Baltimore, and confessed it to be the only original measure descriptive of their territory.

The State of Maryland further represents unto your Honors that the original boundaries of the Province of Maryland are clearly laid down in the aforesaid charter, which created it. These are the fortieth parallel of north latitude: a meridian line running south to the first or most distant fountain of the Potomac, (*"ad verum meridianum primi fontis fluminis de Potowomack,"*) thence proceeding southward (*"deinde vergendo versus meridiem"*) to the further or western bank of that river, and following that bank to a specified point at the mouth of the river, where it debouches into the Chesapeake; thence by a straight line across the bay to Watkins Point and onward to the ocean, and thence by the ocean and Delaware bay and river to the fortieth parallel.

All of which appears from a copy of the original charter filed as part of this bill, commencing at page 6 of the Appendix hereto.

At the time of and after the Revolution, Maryland claimed her western boundary under the charter, which had never been revoked or broken, and this claim has never been in any way waived, yielded or compromised. This claim has been to the South Branch of the Potomac, as the farthest source of the Potomac.

The State of Maryland further represents unto your Honors that from 1785 down to the period of the Civil War, in 1861, various efforts were made for the ascertainment of the western boundary line between the States of Maryland and Virginia, but without success, and in the year 1861 the State of West Virginia was created out of a part of Virginia, and was admitted into and became a member of the American Union, and in her boundaries, (which are designated by county lines,) are included those counties in which the disputed territory lies, and, therefore, the question of the actual boundary

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was left to be settled between the States of Maryland and West Virginia.

It is further represented into your Honors, that from 1868 down to the present time various means have been resorted to by the State of Maryland to have the controversy with the State of West Virginia settled in an amicable and equitable manner, but all efforts in that regard have signally failed, and the State of Maryland is
11 compelled to assert her just and legal rights under the terms of the charter aforesaid.

It is further represented unto your Honors that the territory covered by the charter aforesaid on the western limits of the State of Maryland has been in part covered by grants from the States of Virginia and West Virginia; that West Virginia has assumed jurisdiction over some of the citizens of Maryland, holding lands under grants from this State; that many conflicts have arisen between the citizens of the two States over claims arising out of grants of the same lands by the respective States. The State of Maryland alleges that the State of West Virginia is wrongfully, unlawfully and unconstitutionally in possession of and exercising sovereign jurisdiction and control over a large portion of territory, which, under the constitution and laws of Maryland, the constitution and laws of West Virginia, and under the constitution and laws of the United States, of right belongs to and is part of the territory of Maryland, and over which Maryland should rightfuly exercise sovereign jurisdiction and control. The State of Maryland alleges that the true line of her western boundary is a meridian line running south to the first or most distant fountain of the Potomac, and that such line is several miles south and west of the line which the State of West Virginia claims, and to which the said State is attempting to exercise territorial jurisdiction, and that the State of West Virginia is in possession of and unlawfully exercising sovereign jurisdiction, authority and control over a strip of land several miles wide and within the territorial jurisdiction of the State of Maryland.

It is further represented unto your Honors, that the line referred to in the charter as the Western boundary of Maryland should be truly established, so that the true limit of the rightful jurisdiction of either State should be distinctly determined.

Wherefore, being without remedy on the law side of this
12 Court, the State of Maryland prays that the State of West Virginia be made party defendant to this bill, and that a subpœna be issued and served upon the proper officers of the said State, and that it be required to answer the allegations hereof. And that your Honors, by proper orders and decrees, establish the true boundary line between the State of Maryland and the State of West Virginia, at a meridian line running South from the 40th parallel of North latitude to the first or most distant fountain of the Potomac, in conformity with the ancient chartered rights of this State and the laws creating the State of West Virginia and admitting it into the Union; that the rights, jurisdiction and sovereignty of the State of Maryland to all the land and territory, with all its appurtenances, now held and controlled by the State of West Virginia, lying within

the line of the Western boundary of the State of Maryland, by proper order and decree of this Honorable Court, be restored and confirmed to the State of Maryland; that the State of Maryland be quieted in the full and free enjoyment of its jurisdiction and sovereignty over the same, and that the title, jurisdiction and sovereignty of the State of Maryland over the said territory be confirmed and established by the decree of the Court; that your Honors grant the State of Maryland such other further and general relief in the premises as the facts alleged require at the hands of the Court, and may seem meet and consistent with equity and good conscience. May the subpœna issue, &c.

THE STATE OF MARYLAND,
By WM. PINKNEY WHYTE,
Its Attorney-General.

13

APPENDIX.

Exhibits Filed with the Bill.

The Charter of Maryland—1632.*

Carolus Dei Gratia *Angliæ Scotiæ Franciæ* et *Hiberniæ* Rex Fidei Defensor &c Omnibus ad quos præsentes litteræ nos træ pervenerint *Salutem* Cum perdilectus et perquam fidelis subditus noster Cæcilius Calvert, Baro de *Baltimore* in Regno nostro *Hiberniæ* Filius et Hæres Georgii Calvert Militis, nuper Baronis de *Baltimore* in eodem Regno *Hiberniæ* Patris inherens vestigiis laudabili quodam et pio Christianam Religionem pariter et imperii nostri territoria dilatandi studio flagrans licentiam nobis ut copiosam Anglicanæ Gentis Coloniam Industria ac Impensa sua ad certam quandam Regionem inferius describendam in Terra quadam in Partibus Americæ hactenus inculta et Barbaris nullam divini numinis notitiam habentibus in Partibus occupata deducere possit totamq; illam Regionem cum certis quibusdam Privilegiis et jurisdictionibus ad Coloniæ suæ et Regionis prædictæ salubre Regimen et Statum pertinentibus a regia nostra Celsitudine sibi et Hæredibus suis dari concedi et confirmari humiliter supplicaverit Sciatis igitur quod nos pium et nobile præfatorum Baronum de Baltimore Propositum et Studium Regio Favore prosequentes ex Gratia speciali certa Scientia et mero Motu nostris *dedimus concessimus* et *confirmavimus* et per hanc præsentem Chartam nostram pro nobis Hæredibus et Successoribus nostris præfato *Cæilio* modo Baroni de Baltimore Heredibus et Assignatis suis Damus, Concedimus et Confirmamus totam
14 illam Partem Peninsulæ sive Chersonesi jacentis in Partibus *Americæ* inter Oceanum ex Oriente et sinum de *Chesopeake*

*Sir George Calvert, visiting Virginia as one of the royal commissioners to whom the government of that colony was intrusted under the second charter of 1609, explored the upper portions of Chesapeake Bay, and on his return petitioned Charles I to grant him lands for the establishment of a colony there. He died before the charter granted him was executed, and it was issued to his son, Cæcilius Calvert, Lord Baltimore. It remained in force until the Revolution of 1776.

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ab Occidente a Residuo ejusdem per rectam Lineam a Promontorio sive Capite Terræ vocato *Watkin's Point* juxta Sinum prædictum prope Fluvium de *Wighco* scituato ab Occidente usque ad magnum Oceanum in Plaga Orientali ductam divisam Et inter Metam illam a Meridie usque ad Partem illam Estuarii de *Delaware* ab Aquilone quæ subjacet quadragesimo Gradui Latitudinis Septentrionalis ab Æquinoctiali ubi terminatur *Nova Anglia* totumque illius Terræ Tractum infra Metas subscriptas (videlicet) Transeundo a dicto Æstuario vocato *Delaware-Bay* recta Linea per Gradum prædictum usque ad verum Meridianum primi Fontis Fluminis de *Pattowmack* deinde vergendo versus Meridiem ad ulteriorem dicti Fluminis Ripam et eam sequendo qua Plaga occidentalis ad Meridionalem spectat usque ad Locum quendam appellatum *Cinquack* prope ejusdem Fluminis Ostium scituatum ubi in præfatum Sinum de *Chessopeake* evolvitur ac inde per Lineam brevissimam usque ad prædictum Promontorium sive Locum vocatum *Watkins' Point.*

[See Charters and Constitutions of the United States, page 810.]

15 CHAPTER 563.

An Act to authorize and direct the Attorney-General of the State to take such steps as may be necessary to obtain a decision of the Supreme Court of the United States, which will settle the controversy between the State of Maryland and West Virginia concerning the true location of that portion of the boundary line, between the two States, lying between Garrett county, Maryland, and Preston county, West Virginia, and to appropriate a sum of money therefor.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the Attorney-General of the State be and he is hereby authorized and directed to take as speedily as possible, such steps as may be necessary to obtain a decision of the Supreme Court of the United States which will settle the controversy between the States of Maryland and West Virginia over and concerning, and which will finally fix and determine the true location of that portion of the boundary line between said States lying between Garrett county in the State of Maryland and Preston county in the State of West Virginia.

SEC 2. *And be it enacted,* That the sum of five hundred dollars is hereby appropriated for the payment of the costs of said suit, and on the certificate of the Attorney-General, the Comptroller shall issue his warrant on the Treasurer for the same or any part thereof, and the Treasurer shall pay the same out of any funds not otherwise appropriated.

SEC. 3. *And be it enacted,* That this Act shall take effect from the date of its passage.

Approved April 8, 1890.

[Endorsed:] Supreme Court U. S. October Term, 1891. No. 12. Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Bill of Complaint. Filed December 14, 1891.

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16 And on the same day, to wit, on the 14th day of December, A. D. 1891, an order for appearance for complainant was filed in the words and figures following, viz:

Order for Appearance.

Supreme Court of the United States.

No. 12, Orig'l, October Term, 1891.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

The Clerk will enter my appearance as Counsel for the Complainant.

JOHN PRENTISS POE,
Attorney General of Maryland.

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October Term, 1891. No. 12, Orig'l. Appearance for Compl't. Filed Dec. 14, 1891.

17 And afterwards, to wit, on the 16th day of December, A. D. 1891, a subpœna was issued to the Marshal.

And afterwards, to wit, on the 15th day of February A. D. 1892, the subpœna, with the Marshal's return thereon, was filed in the words and figures following, viz:

18 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of West Virginia, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby [SEAL.] commanded that, laying all other matters aside, and notwithstanding any excuse, you be and appear before the Supreme Court, holding jurisdiction in equity, on the first Monday in March next, at the City of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto a bill of complaint of the State of Maryland, in the said Court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, at the City of Washington, the sixteenth day of December, A. D. 1891.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

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(Endorsed:) I hereby accept service of this writ and I waive all service thereof upon me by the Marshal of the Supreme Court of the United States or any other person.
January 1st, 1892.

ALFRED CALDWELL,
Attorney General of the State of West Virginia.

I hereby accept service of this writ and waive all service upon me by the Marshal of the Supreme Court of the United States,
19 or any other person.

A. B. FLEMING,
Governor of the State of West Virginia.

Jan'y 4, 1892.

OFFICE OF THE MARSHAL.

Supreme Court of the United States.

Feb'y 15, 1892.
Came to hand December 17, 1892.
Executed in full on the Governor and on the Attorney General of the State of West Virginia, on the days indicated, by their several acceptance of service and waiver of all further service, in writing subscribed, each by his own name by his own hand with his official title appended.

J. M. WRIGHT, *Marshal.*

(Endorsed:) Supreme Court U. S. October Term, 1891. Term No. 12, Orig'l. The State of Maryland, Complainant, *vs.* The State of West Virginia. Subpœna and proof of service of subpœna on Governor and Attorney General. Office Supreme Court U. S., Filed Feb. 15, 1892. James H. McKenney, Clerk.

20 And afterwards, to wit, on the 7th day of March, A. D. 1892, the following entry appears of record, viz:

No. 12, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. Alfred Caldwell, of counsel for the defendant, it is ordered by the Court that the time within which to file an answer and cross-bill herein he extended to the second Monday of the next term.

21 And on the same day, to-wit, the 7th day of March, A. D. 1892, an order for appearance for defendant was filed in the words and figures following, viz:

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Order for Appearance.

Supreme Court of the United States.

No. 12, Orig'l, October Term, 1901.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

The Clerk will enter my appearance as Counsel for the defendant.
ALFRED CALDWELL.
GEO. E. PRICE.
S. L. FLOURNOY.

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October Term, 1891. Term No. 12, Orig'l. Appearance for def't. Filed Mar. 7, 1892.

22 And afterwards, to wit, on the 17th day of October, A. D. 1892, the following entry appears of record, viz:

No. 6, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. W. A. Maury, in behalf of counsel, leave is hereby granted to file a stipulation of counsel herein extending the time within which to file an answer, and the time is hereby extended until the first Monday of January next pursuant to said stipulation.

23 And on the same day, to wit, the 17th day of October, A. D. 1892, the stipulation to enlarge time for filing answer was filed in the words and figures following, viz:

24 In the Supreme Court of the United States.

Original, No. —.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

No. 6, Original.

It is agreed that the rule heretofore laid requiring the defendant to answer by the second Monday in October, 1892, shall be enlarged,

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with the consent of the Court, until the first Monday of January, 1893.

JOHN PRENTISS POE,
Attorney General of Md., for the Compl't.
ALFRED CALDWELL,
Attorney General of West Virginia, for the Respondent.

(Endorsed:) Supreme Court U. S. October Term, 1892. Term No. 6, Original. The State of Maryland, Compl't, *vs.* The State of West Virginia. Stipulation to enlarge time for filing answer. Filed Oct. 17, 1892.

25 And afterwards, to wit, on the 30th day of January, A. D. 1893, the following entry appears of record, viz:

No. 6, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. Frederic D. McKenney, in behalf of counsel, it is ordered by the court that the time to file the answer of the defendant herein be extended to the third Monday in February, as per stipulation of counsel.

26 And on the same day, to wit, on the 30th day of January, A. D. 1893, the stipulation to enlarge time to file answer was filed in the words and figures following, viz:

27 In the Supreme Court of the United States.

Original, No. 6.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is agreed that the rule heretofore laid, requiring the defendant to answer by the first Monday in January, 1893, shall be enlarged, with the consent of the Court, until the third Monday in February, 1893.

S. L. FLOURNOY,
GEO. E. PRICE,
Of Counsel for Defendant.
JOHN P. POE,
Attorney General of Maryland, for the Complainant.

(Endorsed:) Supreme Court, U. S. October Term, 189-. Term No. 6, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Stipulation enlarging time for filing answer. Filed Jan'y 30, 1893.

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28 And afterwards, to-wit, on the 6th day of March, A. D. 1893, the following entry appears of record, viz:

No. 6, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

Mr. C. J. Faulkner, in behalf of counsel for the defendant, filed the answer of the defendant, and on his motion leave was granted the defendant to file a cross bill herein within sixty days.

29 And on the same day, to-wit, on the 6th day of March, A. D. 1893, the answer and exhibits thereto were filed in the words and figures following, viz:

30 In the Supreme Court of the United States.

Original, No. 1.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

Answer of the State of West Virginia.

31 The Answer of the State of West Virginia to the Bill of Complaint of the State of Maryland Filed Against Her in the Supreme Court of the United States.

The State of West Virginia reserving to herself all rights of objection and exception to said bill of complaint on account of its insufficiency and many imperfections for answer thereto, says that she is not in possession of or exercising sovereign jurisdiction and control over any territory which of right belongs to or is a part of the territory of the State of Maryland, or over which said state of Maryland should rightfully exercise sovereign jurisdiction and control, but that the whole of the territory now in her possession and over which she is exercising sovereign jurisdiction and control is embraced within her own true, lawful and well established boundaries and that the state of Maryland has no just or legal claim or right to the possession of or to the exercise of any jurisdiction or control over any part of said territory.

Formation and Jurisdiction of West Virginia.

The State of West Virginia became one of the sovereign states of the Union on the 20th day of June, 1863, being formed out of a portion of the territory of the Commonwealth of Virginia, and all the territory claimed by the State of Maryland, in its said bill of

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complaint became a part of the State of West Virginia, and all the territorial rights and property in and jurisdiction over said territory which had theretofore been vested in and exercised by the Commonwealth of Virginia, was transferred to and became vested in the State of West Virginia, and the State of West Virginia has ever since its creation been in undisturbed and exclusive possession of said territory and has exercised sovereign jurisdiction and control over the same.

From the time when the Colony of Virginia was first founded up to the time when the State of West Virginia was created, the territory claimed by the state of Maryland in its said bill of
32 complaint had been embraced within the territorial limits of said Colony of Virginia and of the commonwealth of Virginia after the Revolution, and said colony and commonwealth had exercised exclusive jurisdiction and control over the same. That said territory rightfully belonged to Virginia and that she rightfully exercised such jurisdiction and control over the same will fully and clearly appear from the following statement of facts:

Early History and Boundaries of the Virginia Colony.

The southern part of the North American continent was first discovered by the Spaniards as early as 1512, and they called it Florida. In 1584 the English made discoveries farther northward, and Queen Elizabeth, who then occupied the throne gave the name of Virginia to the country. This name was applied to all the country which was claimed by the English and was recognized to extend all along the coast and inland as far as the country extended. The only attempt at settlement of the new land in the reign of Elizabeth was that made by Sir Walter Raleigh, in North Carolina, in 1584. After the unfortunate result of this enterprise, no further settlements were attempted until the reign of James I, who succeeded Elizabeth in 1603.

First Virginia Charter.

The first Virginia charter was issued by King James I, and was dated the 10th day of April, 1606. By his letters patent of that date he divided that portion of Virginia lying between the 34° and 45° of north latitude into two parts, and he authorized Sir Thomas Gates and his associates under the name of the London company, to plant a colony wherever they might choose between 34° and 41° north latitude and vested in them the right of property in the land extending along the sea coast fifty statute miles on each side of their first plantation and reaching into the interior one hundred statute miles from the sea coast. This territory he called the First or Southern Colony of Virginia.

The other part he called the Second or Northern Colony of Virginia, and this he granted to Thomas Hanham and his associates under the name of the Plymouth Company.

He authorized this company to plant a colony wherever they might

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choose between 38° and 45° north latitude and gave them a territory of similar limits and extent to that given to the first colony. He provided, however, that whichever plantation of the two colo-
33 nies should be last made should not be within 100 miles of the other that might be first established. These colonies were at first called the London and Plymouth Colonies, but their names were soon changed and the name Virginia which had been at first applied to both was retained only by the Southern colony while the Northern colony became known as New England. See charters and constitutions of the United States, Part 2, page 1888.

First Settlement of Virginia.

The London company began its settlement first. The first settlement by that company was made on the 13th day of May 1607 at a place called by them James City on the James river in what is now Virginia. The leading spirit among these first settlers was the celebrated Captain John Smith. See Smith's History of Virginia, vol. 1, book 3, chap. 1, p. 149.

The first charter of April 1, 1606, itself enables us to determine with great accuracy the limits of the grant made by it to the London company. If a meridianal line be drawn through James city and extended each way the distance of fifty statute miles from it; if parallels be drawn through the extremities of this meridian and extended to the sea coast; if 100 statute miles from them be laid off upon each of these parallels, and if a straight line be drawn from the extremity of one of them so determined to the extremity of the other, the diagram so to be constructed may be considered as a parallelogram or square, the base of which will be 100 square miles and its area 10,000 square miles. Such a diagram so constructed is in precise accordance with all the calls of this charter.

This charter was granted before the country to which it was designed to apply was discovered, and the territory could not reasonably be confined to such limits owing to its many disconnected peninsulas. This was soon discovered by the exploration of Captain John Smith in the year 1608. (See Smith's History of Virginia, vol. 1, book 3, chps. 5 and 6 and the map.) Accordingly the London company applied to the King to alter this charter and on the 22nd of May 1609 he issued new letters patent of that date for that purpose.

The Plymouth company had then made no settlement, so that the country granted was as open to the new grant as it had been in 1606.

Before this new charter was granted to the London company the northern headlands at the mouth of James river was discovered and called by the name it still bears—Point Comfort.

34 *Second Charter of Virginia.*

Taking this known and established position as a starting point the new charter granted to the London company "all those lands

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&c., situate, lying and being in that part of America called Virginia from the point of land called Cape or Point Comfort, all along the sea coast to the northward 200 miles; and from the said Point or Cape Comfort all along the sea coast, to the southward 200 miles, and all that space or circuit of land lying from the sea coast of the precinct aforesaid up into the land throughout from sea to sea west and northwest; and also all the islands lying within 100 miles along the coast of both seas of the precincts aforesaid." (See Stith's History of Virginia, appendix no. 2, p. 8, etc., also Charters and Constitutions U. S., part 2, page 1893).

As one of the purposes of this second charter is declared in it to be "to grant a further enlargement and explanation of the former grant of 1606," and as no other change in the mode of determining the new and enlarged limits from that required for determining the boundaries under the first charter, except that the precise point of Cape Comfort is substituted for James City, we are bound to adopt the same mode of determining the new limits which had been above suggested in the former case. Therefore if a meridianal line be drawn through the point of Cape Comfort, and extended each way to the distance of 200 miles from thence; if parallels be drawn through the extremities of this meridian and extended from sea to sea (*i. e.* from the Atlantic to the South sea or Pacific), the diagram so constructed may be consid-ed a parallelogram, the base of *of* which will be the sea coast of the Atlantic, having a meridianal length of four hundred miles, bi-sected by the parallel of the point of Cape Comfort, and the altitude of this parallelogram will be the distance from sea to sea.

The reasons why the limits of the London Company was extended precisely 200 miles to the north of the parallel of the point of Cape Comfort may be found by calculating the difference of latitude between that parallel and the more northern parallel of 40°. In making this calculation allowance must be made for the trifling error caused by the imperfection of the clumsy instruments used in 1609, for making observations of latitude, as also for the erroneous opinion then entertained as to the length of a degree of a great circle in English statute miles. The exact quantity of each of these errors is now known. And correcting the calculation in this way, it will be discovered that 200 hundred English statute miles, measured along a meridian from the parallel of the point of Cape Comfort will reach to the parallel of 40° North latitude, which parallel was then made the common boundary between the two great districts of Virginia and New England, (For the facts in the foregoing statement see Report No. 457, 28th congress 1st session H. Reps. "Issue of "scrip," etc., to accompany bill H. Reps. No. 353, made by Hon. H. E. Hubard, from Committee on Public Lands, partly written by L. W. Tazewell, Esq., and partly by Benjamin Watkins Leigh, Esq., of Va., and partly by Mr. Hubard—see his letter to Hon. H. A. Wise, dated September 6, 1872, a copy of which is found on pages 1 to 4 of the appendix to the report and accompanying documents of the Va. Comms' on Maryland and Virginia boundary line of 1873), which last named report and docu-

ments is filed herewith as part of this answer marked Defendant Exhibit A.

Third Charter.

A third charter was granted by King James I, to the London Company March 12, 1612, by which he granted to said company "all and singular those islands whatsoever situate lying and being in any part of the ocean seas bordering upon the coast of our said first colony in Virginia and being within 300 leagues of any of the parts heretofore granted to the Freemen and Company, in our former letters patent as aforesaid and being within the 41° and 30° of northerly latitude," etc. Charters and Constitutions part 2 page 1902.

Cancellation of Virginia Charters.

All these three charters of the London Company were cancelled by a judgment of the Court of Kings Bench at the Trinity term in the year 1624 in a *quo warranto* proceeding. But this cancellation of the charters of the company simply had the effect to take away the monopoly of the said company and its power of government over the colony. It did not affect the territorial limit of or other rights of the colony. It simply transferred the government of the colony from the London company to the King, and the royal government thus established recognized and extended over the same territory and colony, as the company had held. Virginia was after that the Southern Colony of Virginia, just as it had been before, and the right of her citizens and the extent of her territory were to be determined by the provisions of those charters as well after said judgment in the *quo warranto* case against the company as before.

36 The colonial legislature opposed the restoration of the charters to the company in 1642 (see Henning's statutes at large pp. 230, 236). In 1671 a series of inquiries was addressed to Governor William Berkley, of Virginia, by the Commissioners of Foreign Plantations, among them the following: "What are the bounds and contents of the land within your government?" And Governor Berkley sets out the bounds of Virginia in reply to the inquiry. The charters therefore were not annihilated but were recognized. So far as lands had been granted under the charters the title remained in the grantees: so far as the lands in the territory were vacant they became revested in the crown and were from that time crown lands in the King's dominion of Virginia. The extent of that dominion was to be ascertained only by the territorial limits described in the charters. Those vacant lands could only be obtained by grants from the crown, and these grants were made according to a system of land laws enacted by the colonial legislature and through the instrumentality of the colonial government.

Charter of North Carolina.

The colony of Virginia therefore extended from the 40° north latitude, which lies 16 miles north of the present southern boundary

of Pennsylvania, to the 34° north latitude, which is near the most southern point of North Carolina. In 1662, King Charles II, granted Carolina to the Earl of Clarendon and others, which extended northward as far as 36° 30′ and this had been ever since the southern boundary of Virginia.

Maryland Charter.

James I, died in 1624, and was succeeded by Charles I, who was a friend of Lord George Baltimore. King James I, had granted Lord Baltimore certain territory at Newfoundland, and he had founded a colony there, but becoming dissatisfied with the colony on account of the rigor of the climate he visited James City in Virginia in 1629, and being unable to take the oaths of supremacy and oaths of allegiance that were tendered by the authorities of Virginia, he petitioned the King to make him a grant of certain unsettled parts of Virginia. Before the charter was granted Lord George Baltimore died and was succeeded by Cecilus Calvert, Baron of Baltimore in Ireland, etc.; and in 1632, Charles I, issued the charter of Maryland to said Calvert, a copy of which in latin is filed with the bill of complaint of the State of Maryland in this case. And see Charters and Constitutions U. C., part 1, page 810. There is some
37 doubt as to the correct reading of the original charter, and there is also some question as to what is the correct translation of it. The State of West Virginia submits the following as the best authenticated copy of the original charter of Maryland and also what is believed to be a true translation of it in parallel columns. This is an exact copy of a document obtained by Col. De Jarnette, who was sent by the State of Virginia to England in 1871, to procure documentary evidence relating to the disputed boundary lines between that State and the State of Maryland. Col. De Jarnette in his report to the Governor of Virginia made November 8, 1871, says of this paper:

"Chapter 20th. Patent to Cecil (Lord Baltimore) containing a grant of province of Maryland, communicated to Mr. Beak from Lord Baltimore dated June 20, 1632. This purports to be the original, found in the Rolls office, enrolled on parchment and engrossed in the Latin language. This copy was taken by the Keeper of the Rolls and bears his official seal. To verify this (a most important paper) I employed Thomas Edlyne Tomlius (attorney-at-law and Record Solicitor of Lincolns Inn Fields, London,) to copy and translate so much of this Latin Charter, found in the Rolls Office, as describes the bounds of the territory thereby granted."

DARK PAGE BLEED THRU

Translation — Extract Patent Roll 8, Charles I, Part 3, No. 5, (20 June, 1632).

Of a grant to him and his heirs, to Cecil, Baron of Baltimore, the King, &c., to all to whom, &c., Greeting:

Know ye, therefore, that we, regarding with Royal favor the pious and noble purpose and intention of the aforesaid Barons of Baltimore, of our special grace, certain knowledge and mere motion, have given, granted and confirmed, and by this our present charter for us, or heirs and successors, do give grant and confirm to the aforesaid Cecil, now Baron of Baltimore, and his heirs and assigns, all that part of the Peninsula or Chesronese lying in the parts of America between the Ocean on the East and the Bay of Chessopeake on the West, divided from the remnant of the same by a right line drawn from the Promontory or head of Land

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called Watkin's Point, beside the Bay aforesaid, situate near the river Wigheo, on the West, as far as the Great Ocean on the Eastern Coast, and between that boundary on the South as far as to that part of the Estuary of the Delaware on the North, which lieth under the fortieth degree of North Latitude from the Equator where New England is bounded; and all that tract of land within the boundaries underwritten, that is to say: Going from the said Estuary, called Delaware Bay, in a right line in the degree aforesaid to the true meridian of the first source of the River of Pattowmack, then tending downwards towards the South to the farther bank of the said River,

Transcript of the original Inrollment in Latin with the abbreviations extended.

De concessione sibi et haredibus Cecilli Baroni de Baltimore, Rex & Omnibus ad quos, &c. Sciatis igitur quod nos pium et nobile prefatorum Baronum de Baltimore, propositum et studium regio favore prosequentes, ex gratiae specili, certa scientia et mero motu nostris. Dedimus, concessimus et confirmavivus et per hanc presentam chartam nostram pro nobis heredibus et succesoribus, nostris prefato Cecilli, modo Baroni de Baltimore et heredibus et assignatis suis Damus concedimus et confirmavivus Totam illam partam (sic) Peninsule, sive Chersonesus jacentem in partibus Americe inter Occanum ex oriente et Sinum de Chesopeake ab occidente, a residuo ejusdem per rectam lineam a promontorio sive Capite terre vocato Watkins

Point juxta sinum predictum, prope Fluvium de Wigheo situatum, ab occidente, usque ad magnum Occanum in plaga orientali ductam divisam, et inter metam illam a meride usque at partam illam estuarii de De La Ware ab Aquilone que subjacet quadrigesimo gradui latitudinis Septentrionalis ab equinoctiali ubi terminatur Nova Anglia, Totum que illum terre tractum infra metas subscriptas, videlict transeundo a dicto Estuario vocato Delaware Baye recta linea per gradum predictum usque ad verum meridianum primi fontis fluminis de Pattowmack deinde vergendo versus meridiem ad ulteriorem dicti fluminis ripam et eam sequendo qua plaga occidentalis et

and following it to where it faces the Western and Southern Coast as far as to a certain place called Cinquak, situate near the mouth of the same River, where it discharges itself into the forenamed Bay of Chessopeake, and from thence by the shortest line, as far as the aforesaid Promontory or place called Watkin's Point. So as all the tract of land divided by the line aforesaid between the Great Ocean and Watkin's Point, as far as to the Promontory called Cape Charles, and singular their appendages, to us, our heirs and successors are entirely remaining forever excepted. And also all Islands and Isles within the limits aforesaid. We do also grant and do confirm to the same Baron of Baltimore, his heirs and assigns, all and singular Islands and Isles on the Eastern Shore of the aforesaid country towards the east risen or to arise in the sea situate within ten sea leagues from the same

meridionialis spectat usque ad locum quendam appelatum Cinquack prope ejusdem Fluminis ostium scituatum ubi in prefatum Sinum de Chessopeak evolvitur ac inde per lincam brevissimam usque ad predictum Promontorium sive locum vocatum Watkin's Point. Ita qoud totus terre tractus per lineam predictam inter magnum Oceanum et Watkin's Point divisus usque at promontorium vocatum Cape Charles et singula sua appendentia nobis heredibus et successoribus nostris integre remanentia exceptis imperpetuum, nec non omnes Insulas et Insululas infra limites predictos. Concedimus eciam et confirmavivus eidem Baroni de Baltimore heredibus et assignatis suis omnes et singulas Insulas et Insululas ab orientali predicte Regionis littore orientem versus, in mari natus vel nascendas infra decem lineas marinas ab eodem littore scituatus (sic) cum omnibus et singu-

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shore, with all and singular ports, roads of shipping, estuaries, flowings of water and arms of the sea to the Country or Islands aforesaid belonging.

A true translation.

THOS. EDLYNE TOMLINS,
Attorney-at-Law and
Record Solicitor,

No. 25, Lincolns Inns Fields, London, June 5, 1871.

lis portubus, navium stacionibus estuariis, fluminibus et fretis ad regionem vel Insulas predictas pertinentes.

A faithful transcript.

THOS. EDLYNE TOMLINS,
Attorney-at-Law and
Record Solicitor,

No. 25 Lincolns Inns Fields, London, 5th June, 1871.

See House Documents of Maryland, 1874, pages 219 and 220.

It will be observed that the northern limits of Maryland, as described in the charter was the 40° *north latitude where New England is bounded* or terminates, and that it extends *from the Delaware Bay* with the 40° to the *meridian* of the *first fountain* of the Potomac.

It is proper to state here that the Plymouth Company, or Northern Virginia Colony, had made no settlement up to 1620 and in that

year a new and enlarged charter had been granted to the Duke of Lenox and others who were denominated the Plymouth Company, conveying to them in absolute property all the lands between the 40° and 48° north latitude. This Company in 1627 conveyed to Henry Rosewell and others that territory which is now Massachusetts, and in 1635 the Plymouth Company surrendered its charter to the Crown. (See Marshall C. J., opinion in Johnson and Grahams Lessees *vs.* William McIntosh, 8 Wheaton.)

In 1632 therefore the southern boundary of the Plymouth Company's territory, or of New England, as it was called, was the 40° north latitude, and it was to this line that Lord Baltimore's charter extended northward.

The territory described in the Maryland charter also extended to the Ocean and the *Delaware Bay* on the east.

Western Boundary of Maryland.

The western boundary was to be ascertained by following the 40° "to the true meridian of the first source of the River Potomack then tending downward toward the south to the further bank of the said river, and following it to where it faces the western and southern coast as far as to a certain place called Cinquack situate near the mouth of the same river where it discharges itself into the forenamed bay of Chesapeake."

40 *Maryland Territory Taken from Virginia.*

It will be observed that the whole of the territory described in the charter to Lord Baltimore was included within the limits of the Virginia charter of 1609. The Virginia colony strenuously opposed the granting of this charter to Baltimore, and tried to have it revoked after it was issued, claiming that the territory belonged to Virginia, and that it was an unwarranted and unlawful dismemberment of her domain. The King referred the matter to his Privy Council and the controversy was heard by the Council, and on the 3rd of July, 1633, they decided "to leave Lord Baltimore to his patent, and the other parties to the course of the law, according to their desire." (Chalmers' annals ch. 9, note 18.)

Grant of Northern Neck of Virginia in 1649-50-51.

On 28th July, 1639, a petition by the governor and company of London for the plantation of the Somer Isles—now Bermuda Isles—see map of 1763 (see No. 56, State Papers, Colonial Vol. 10, No. 30) addressed to the Lord Commissioner of foreign plantations shows that said company was incorporated about the year 1621, and the inhabitants were not able to subsist there and sought another place. That an agreement had been made between the company of Virginia and the petitioners when the latter purchased the Somer Isles from

the former, that the petitioners should receive a large proportion of land in Virginia, and they prayed for a grant of land situate and being betwixt the two rivers of Rappahannock and Potomack. This petition shows that the northern neck as it is now called, was not then inhabited by English subjects, and that no grant thereof had yet "passed to any." This with the enclosed papers was submitted to the Lords Commissioners on the 1st day of August 1639. Then August 3, 1663 came a letter from Charles II. to the Governor and council of Virginia, reciting that he had granted to Henry, Lord Germine now Earl of St. Albans, Ralph Lord Hopton and others in the First year of his reign by letters patent under the great seal of England (since enrolled in the Court of Chancery) "all that tract, territory or portion of land in America bounded by and within the heads of Tappahannock alias Rappahannock and Querrough or Potomack rivers, the courses of these rivers and Chesapeake Bay, togethers with the rivers themselves, and all islands within the banks of the said rivers, as in and by said letters patent doth and may more at large appear, which by reason of the late unhappy and unsettled times they could not plant or enjoy according to our royal intention." And it recites that the said Earl of St. Albans,
41 Ld Berkley, Sir William Morton and our servant, John Fetleroy, assignee of said Lord Hopton (being the surviving patentees and parties interested) had lately, since the restoration of said Charles II. to his rights and government granted and demised to Sir Humphrey Hooke, Knt., and others the said tract and territory for a certain number of years. And also reciting that he had by his letters under his sign manual signified to the Governor and Council of Virginia that they should give these patentees aid and assistance, and that he had reasons to believe his said letters had miscarried and had not come to their hand, for that they had lately obstructed the proceedings upon his said letters patents and had not permitted the patentees, &c., to act in pursuance or according to the tenor thereof. And then directs that the Governor and Council shall forbear to give any further interruption but that they aid and assist the patentees, &c., and concludes as follows: "Neither we intending nor our said patentees desiring to withdraw the said Colony from under your government or appeal."

See the De Jarnette State Papers, No. 80, Colonial Virginia, Vol. 59, No. 19, Aug. 3, 1663; see page 155 of the report, &c., of the Virginia commissioners on the boundary line between Maryland and Virginia 1873, Exhibit "A" above.

Confirmatory Grant of Northern Neck in 1668-9.

And in the Public Record Office of England, Chancery Patent Roll 21 Car. 11 dated May 3, 1667, came the patent or grant from Charles II confirming Letters Patent under the great seal of England bearing date at St. Germines the 18th day of September in the first year of our reign unto Ralph Lord Hopton, Henry, Earl of St. Albans, etc., etc., their heirs and assigns for ever, all that entire tract,

territory or parcel of land situate lying and being in America, and bounded by and within the *heads* of the rivers Tappahannock alias Rappahannock and Quiriough or Pattowmack river, *the courses of the said rivers*, as they are commonly called and known by the inhabitants and description of those parts and Chesapeake Bay, *together with the rivers themselves*, and all the islands within the banks of those rivers. And all woods, etc."

This patent recites the terms of the grant to Lord Hopton made in the first year of the reign of Charles II which was 1651 and then recites that "whereas the said Ralph, Lord Hopton, John, Lord Culpeper, Sir Dudley Wyatt, and Thomas Culpeper being all since dead, and the said Ralph, Lord Hopton having in his life time, by
42 good and sufficient conveyance and assurance in law, convied and assured all his estate and interest in said premises unto John Tretheny, Esq., and his heirs all the said premises, tract, territory and portion of land, "etc," and whereas the said Henry, Earl of St. Albans, etc., by their deeds, etc., bearing date the nine and twentieth day of June now last past, etc., have granted and sur-endered to us the said tract, etc., with the aforesaid letters patent to be cancelled, to the intent that we would be graciously pleased to grant them new letters patent thereof, etc., etc. Now know ye, that we for, etc., have granted and confirmed, etc., unto the said Earl of St. Albans, John Lord Berkley, Sir William Morton, John Tretheny, their heirs, etc., all that certain tract, territory or parcel of land situate, lying and being in America and bounded by and within the heads of the river of Tappahannock alias Rappahannock, and Quiriough alias Potowmack, river, courses of said rivers together with all the rivers themselves and all the islands within the banks of those rivers, etc." And after full and complete proprietary rights and powers are granted, and a covenant to supply all further defects it proceeds: "Provided always, etc., that these presents or anything therein, etc., shall not extend or be construed to extend to infringing, make void or otherwise prejudice any contract or grant, etc., whatever heretofore made or granted by the Governor and Council of Virginia of the premises, etc., etc., made before the 29th day of September in the 13th year of our reign." And these grantees were prohibited from acting or intermeddling in the military affairs or forces in the territory "or with the government or command of any of the castles, forts, etc., thereof without the order, authority and command of the Governor and Council of Virginia, for the time being, but the same shall remain, continue and be in the Governor and Council of Virginia, etc., etc. And the Governor and Council and Assembly of Virginia for the time being shall have full power and authority to lay any taxes and impositions in and upon the said territory hereby granted." And these grantees and the inhabitants in the territory were "in all things made subject and obedient to such laws and constitutions as are or shall be made by the said Governor, Council and Assembly for or concerning the said Colony or the Governor thereof."

This confirmatory grant was dated May 8 in the 21st year of the

reign of Charles II. He never counted the years of the Commonwealth or of Cromwell. Charles I was executed in 1649, and was succeeded according to the claims of the royal family by Charles II in the same year and it was in that year while he was in exile that Charles II made the first grant above named to the Earl of
43 St. Albans, Lord Hopton and others. And according to the same count this confirmatory grant was in 1668-9.

Confirmatory Grant of Northern Neck to Lord Culpepper.

A third patent was issued by James II in the 4th year of his reign which after reciting a sale and conveyance of the granted premises by the former patentees to Thomas, Lord Culpeper "who thereby became sole owner and proprietor thereof" proceeds to confirm the same to Lord Culpeper, in fee simple and to release him from the condition of having the lands inhabited and planted in the space of twenty-one years as had been provided in the former patent.

Lord Fairfax Succeeds Lord Culpepper.

Upon the death of Lord Culpeper, Thomas, Lord Fairfax became his heir at law and as such became the sole proprietor of the said territory with the appurtenances and the above recited letters patent.

The Fairfax Title.

Thomas, Lord Fairfax died in 1781 and by his last will and testament duly made and published devised the whole of his lands, etc., called or known by the name of the Northern Neck of Virginia, in fee to Denny Martin, etc., upon condition of his taking the name and arms of Fairfax, etc., which condition was fully complied with.

See full statement of this title in the case of Fairfax's devisees *vs.* Hunter's Lessees, 7 Cranch. 604.

Also in Marshall *vs.* Conrad, 5 Call. (Va.) 404.

Also in an act of the General Assembly of Virginia passed in 1736, entitled "an act for confirming and better securing the titles to lands in the northern neck held under the right honorable Thomas Lord Fairfax, Baron of Cameron, etc.

1 Revised Code, 1819, ch. 89.

This last act recites the three several letters patent above set out, and that Thomas, Lord Fairfax "is now become sole proprietor of the said territory with the appurtenances and the above recited letters patent" and that "divers great quantities of land have been granted to adventurers and planters within the said territory in fee simple, by the agents and attorneys of the said Lord Fairfax and his predecessors, former proprietors of the said territory and let-
44 ters patent by virtue of divers letters of attorneys from time to time by them respectively given to their said attorneys and agents, but now of late, after long possession and great and valuable improvements made upon said lands by said grantees, questions are

like to arise between them and the present proprietor touching the validity of such grants, etc., and then confirms all such grants made by any of the agents and attorneys of the proprietors of said territory or any of them, and declares that they shall be good, available and binding in law, etc.

Fairfax's Devisees Settle with Virginia.

By an act of the General Assembly of Virginia, passed Dec. 10, 1796, (1 Rev. Code of Va. ch. 92,) the Devisees of Lord Fairfax relinquished to the commonwealth of Virginia all claim to lands supposed to be within the Northern Neck, which were waste and unappropriated at the time of the death of Lord Fairfax, and Virginia confirmed the title of those claiming under Mr. Fairfax to lands specifically appropriated and reserved by the late Thomas Lord Fairfax or his ancestors for his or their use.

It will be seen from the foregoing recital that the title to the territory included in the charters granted by Charles II, and James II to the Earl of St. Albans, Lord Hopton and others, continued in those patentees and their grantees and those claiming under them down to the revolution and that after the revolution in 1796 all of the territory that then remained waste and unappropriated and which had not been specifically appropriated by the former proprietors became vested in the commonwealth of Virginia. These lands so relinquished to Virginia became subject to entry, survey and grant through the land office of Virginia in the same manner that all her other waste and unappropriated lands were, and they were afterwards all granted by Virginia in this way. See ch. 91, 1 Rev. Code of Va. Acts 1785 ch. 47 erroneously numbered 67. In the case of Fairfax's devisees *vs.* Hunter's Lessees, 7 Cranch 604, this court held that "Lord Fairfax, at the time of his death, had the *absolute property, seisin and possession* of the waste and unappropriated lands in the Northern Neck of Virginia."

Jurisdiction of Virginia and West Virginia Over the Fairfax Grant.

The territory embraced in this Northern Neck tract had belonged to and been under the jurisdiction and dominion of the
45 Colony of Virginia from the time her first charter was granted in 1606. The patents for that territory granted by Charles II. and James II. to Lord Hopton and others expressly left it under the governmental jurisdiction and control of the Colony of Virginia, and it has continued under the exclusive sovereign jurisdiction and control of Virginia and of the State of West Virginia, so far as it lies within the limits of the latter, from the Revolution to the present time.

This court and the Supreme Court of Appeals of Virginia have decided that *Lord Fairfax* and those under whom he claimed and those claiming under him had not only the absolute fee simple title to the soil of the territory *but also the seisin and possesion of the same.*

This absolute title and seisin and possession have continued undisturbed to the present day, and the governmental jurisdiction and control over said territory has been exercised exclusively first by the Colony and then by the Commonwealth of Virginia, and since June 20, 1863, by the State of West Virginia so far as this territory lies within her limits.

Boundaries of Northern Neck.

Now, What are the boundaries of this Northern Neck of Virginia? What is its location? The boundaries and location of this territory have been definitely established, marked and determined, by the only authority having the power and jurisdiction to establish, mark and determine them, for nearly a century and a-half and during all that time they have been recognized and respected and have not been interfered with, as will fully appear from the following historical statement of facts.

Survey of the Northern Neck—1736.

On November 29, 1733, the King, in council, made an order which recites that Thomas, Lord Fairfax, had presented his petition setting out his patents from Charles II. and James II. and describing his title and territory thereby granted (as above set out) and that several disputes have arisen between his Majesty's Governor and Council of Virginia and the petitioner and his agents touching the boundaries thereof, and that said Governor and council have from time to time actually taken upon them to issue grants of divers parcels of land, parts of petitioners' said tract, etc., and that he is advised that they were clearly within the bounds of his said tract, and
that said Fairfax prays that in order to settle the boundaries
46 of the petitioners' said tract or district his Majesty would be graciously pleased to order a commission to issue for running out, marking and ascertaining the bounds of petitioners' said tract or district of land agreeable to the description thereof as expressed and contained in the said several grants from the crown, and to name such number of commissioners for Virginia as his Majesty should think proper to be joined with an equal number on petitioners' behalf, to run, settle, and ascertain said boundaries, etc., and that the Governor and Council of Virginia ought to be directed and prohibited from making grants, etc., until said boundaries, etc., were settled: And thereupon his Majesty orders that the Lieut. Governor of Virginia shall nominate three or more commissioners (not exceeding five) who in conjunction with a like number to be named, etc., by Lord Fairfax are to survey and settle the marks and boundaries of the said district of land agreeably to the terms of the patents under which the said Lord Fairfax claims, within the space of two years after the arrival of this order, and in the meantime the Lieut.-Governor is ordered not to presume to make any grants within the above mentioned tract.

Lord Fairfax brought over this order himself, but did not present it to the governor until more than two years from its date. See

Byrd Manuscripts. Proceedings of the Commissioners to lay out the bounds of the Northern Neck.

Commissioners Appointed.

William Gooch, the Governor of Virginia, on the 7th day of September, 1736, the 10th year of the reign of George II, Commissioned William Byrd, John Robinson and John Grimes, as commissioners to act for the Colony of Virginia in this matter.

Instructions to Commissioners.

In the instructions to these commissioners, dated September 8, 1736, is the following:

"For as much as it may be necessary for the more clear description of the bounds in the controversey to have exact maps of the Rivers Rappahannok and Potomack and the branches thereof to the first heads or springs so called or known, you are to cause the surveyors so by you employed to prepare correct maps thereof in order to be laid before his Majesty." And they were also instructed "to take depositions and affidavits of such persons as you shall see proper to examine touching said Rivers Rappahanneck and Potomack, and

how far they were known by these names at the time of the
47 last grant made by King James II, to Lord Culpeper, and

how far the bounds of the territory aforesaid were reported to extend, or have been since bounded by the proprietors thereof or their agents, etc., etc."

See Byrd's Manuscript, etc.

Lord Fairfax appointed Charles Carter, William Beverly and William Fairfax, as his Commissioners, and instructed them "to make full, true and exact report of all matters of fact and all their proceedings specially in order to be laid before his Majesty for his final determination, etc., etc., also to mark and settle the boundaries aforesaid after such determination of his Majesty with such commissioners as shall be nominated by his Majesty."

The King's Commissioners and two of Fairfax's Commissioners met at Fredricksburg, September 25, 1736. A question arose as to the powers of the Commissioners, Fairfax's claimed that they were only empowered to survey the controverted bounds so that a state of facts might be afterwards laid before the King for his Royal determination. And this was finally acceded to by the King's Commissioners.

Instruction to Surveyors.

The King's commissioners appointed Mr. Mayo and Mr. Brooks as surveyors who in conjunction with Mr. Winslow and Mr. Savage appointed on the part of Lord Fairfax were instructed among other things "to run the courses and measure the distance of the Branch of the Potomack called Cohaungoruton from its confluence with

Sharando to the head spring thereof," with orders to return an exact map of said river showing all the streams that run into the same on either side. They were also directed to *take the latitude and observe particularly where the said river intersected the 40th degree.*

The Survey of the Potomack River.

This survey was begun in the fall of 1736 and was not completed until the summer of 1737. The Potomack above its confluence with the Shenandoah, then called the Sharando, was known as the Cohungoruton, and it bore this name to the head of the North Branch, the South Branch being known as the Wappacomo.

North Branch Adopted as Main Potomack River.

When the surveyors arrived at the mouth of the South Branch of the Potomack they halted and took observations and made
48 careful measurement of the width, depth and volume of water of the two streams, the general course of these streams and of the topography of the country, and after carefully considering the matter they decided that the Northern Branch was the main river, and accordingly they proceeded up it, and traced and surveyed the course to its head springs in the Alleghany mountains. The Rappahannock had been surveyed by another party, and the line between the head springs of these two rivers was afterwards run and ascertained.

Report and Maps of the Survey.

After the surveys were made Fairfax's Commissioners refused to co-operate with those of the King in making up their report and maps. Finally the King's Commissioners determined to make a report without them and ordered Mayo to make a general map out of the several particular maps that had been made. And William Byrd in his accounts of these matters contained in his manuscript above mentioned, states that "Major Mayo formed an elegant map of the whole Northern Neck by joining all the particular surveys together, etc. That the Potomack River was therein likewise traced with great exactness from the mouth up to the fork, a little beyond the Blue Ridge of Mountains and from thence up the North Branch called Cohungoruton—quite away to the head springs thereof with all the waters that discharge themselves into it. And the distance Cohungoruton runs from its confluence with Sharando is according to the meanders thereof 206 miles to the Foundation thereof. From the hills out of which this river rises may be seen other waters which run westward, and may be the spring of one of the branches of the Mississippi, probably that commonly called Alleghany. In the map the courses of Sharando are not described, but just where it parts with Cohungoruton, by reason such description could give no light to the controversy betwixt his Majesty and Lord Fairfax."

The Report and maps of the King's Commissioners were made in duplicate and delivered to the governor in August 1737 in order to be transmitted, and Lord Fairfax soon after sailed for England, taking the report of his commissioners with him, etc.

See Byrd's Manuscripts for a full account of this proceeding, etc.

A copy of the map made at this time is also filed herewith as part of this answer marked, "Survey of Northern Neck 1736-7." Defendant's Exhibit B. This is a litho-photographic copy made in London for either McDonald or De Jarnette sent there by Virginia, to be used in her controversy with Maryland.

Report of Lords Commissioners of Trade and Plantations.

49 After the report of the commissioners was filed Lord Fairfax January 12, 1738 obtained a reference to the Lords of Trade (and Plantations) for them to examine the whole matter and report a full state of the case together with their opinion thereupon to the Lords of the Committee of Council. Their Lordships on the 27th of July, 1738 returned an elaborate report which reviews the matter from the filing of the petition, sets out the three grants with the description of the territory contained in each; the appointment of the commissioners and that they had made separate reports, etc.; sets out the report of the crown commissioners "that they took their survey of the main branch of the Potomack (called the Cohungoruton) from its confluence with the Sharando and so upward beyond the Blue mountains to its first head." * * * that said report then returns again to the Potomack and refers to the deposition of Thomas Harrison 'that the falls of the Potomack were not known fifty years ago' and the commissioners further say "that the lands at or near the Falls were not granted till 1709 and that it was not known that the river runs through the mountains till several years after, that the river loses its name at the confluence and is called by the Indians as it goes up higher Cohungoruton and Sharando and concluded "that the Fork" (that is the confluence of the Cohungoruton and Sharando) may not improperly be called the head" which opinion they attempt to corroborate by saying "that the head of the Potomack stretches beyond the Blue mountains and that of Rappahannock reaches no higher than those mountains, they could not be intended as boundaries by the grant of King James since the one reaches above 200 miles above the other," that they conclude their report by giving several boundaries for Lord Fairfax's grant and mention what quantity of land each of those boundaries contained, etc.

The report then gives the report of the commissioners of Lord Fairfax, and it states that the dispute between the Crown and Lord Fairfax being which is the main river of Rappahannock, the north or south branch also which is the first head or spring of Potomack, they have surveyed and measured up the river Potomack from the mouth of the Sharando and that of the Rappahannock from the

falls to their respective heads or springs, and are of opinion "that a line runs from the first head or spring off the south or main Branch of Rappahannock to the first head or spring of the river Potomack is and ought to be the boundary line determining the said tract or territory of land commonly called the Northern Neck." The report then gives the arguments advanced on the one side to support the opinion of the King's Commissioners and on the other to support that of Fairfax's Commissioners, and concludes as follows: "upon the whole it appears to us that the dispute between the Crown and Lord Fairfax turns chiefly upon the construction of the words of the Patent upon which we have already reported what was said by the council on both sides and shall submit that entirely to your lordship's determination."

The King's Decision.

The matter was pending before the King in council until the year 1745 and on the 11th of April in that year the King finally decided it, adopting the views of Lord Fairfaxe's commissioners and decided that the head spring of the Potomack was the source of the Cohungoruton as surveyed and ascertained by the commissioners. (See Narative and Critical History of America, edited by Justin Windsor, librarian of Harvard University, Vol. V, pages 276, 272, 273, &c.)

Lord Baltimore Had Notice and Was Present at Hearing.

Lord Baltimore had notice of this proceeding and was present with Lord Fairfax at the hearing before the council. This is stated in a letter from his heir and successor, Cecilius Lord Baltimore, discussing this matter, dated London, January 5, 1754, found in the archives of Maryland. Correspondence of Governor Sharpe, 1753, 1757, pages 18 and 19, which will be more fully noticed hereafter.

Fairfax Stone Planted in 1746.

At the time the King decided the matter ascertaining the head springs or first fountains of the Potomack and Rappahannock rivers, his Majesty appointed other commissioners to run and mark the line between the head springs of said rivers. These commissioners began the journey to the head springs or first fountains of the Potomack in September, 1746, and on the 17th day of October, 1746, planted what has ever since been known as the "Fairfax Stone" at the head spring of the Potomack—that is, at the head of the Northern Branch. They then ran the line from that point to the head of the South Branch of the Rappahannock, and returned a report and map of the same which was sent to the King and by him ordered filed among the colonial records.

51 *The Fairfax Stone.*

Thus was established and settled the boundaries of the Northern Neck of Virginia, by the King in Council, in 1745, and those boundaries were marked by monuments which remain to this day. "The Fairfax Stone was easily recognized and identified September 19, 1858, by Commissioners McDonald on the part of Virginia and Lee on the part of Maryland, and by Lieut. Michler, U. S. Topographical Engineer. (See joint report of McDonald and Lee, commissioners to their respective state legislatures dated December 21, 1859.) Lieut. Michler in his report of the surveys made by him under the direction of said commissioners dated Maryland and Virginia Boundary survey office, Washington, D. C., December 20, 1859," describes the stone as follows: "The initial point of the work, the oft-mentioned, oft-spoken of "Fairfax Stone" stands on a spot encircled by several small streams flowing from the springs about it. It consists of a rough piece of sandstone indifferent and friable, planted to the depth of a few feet in the ground, and raising a foot or more above the surface. Shapeless in form it would scarcely attract the attention of the passer by. The finding of it was without difficulty and its recognition and identification, by the inscription "Ffx" now almost obliterated by the corroding action of water and air."

Virginia Adopts Bounds of Northern Neck as Established—1748.

The Colony of Virginia at once accepted and acquiesced in the bounds of Lord Fairfax's territory as it had been established, run out and marked by the King and at once took steps to confirm and settle the land titles within the same. And by various acts of her General Assembly she recognized the lines as so fixed. This is shown by the several acts creating new counties out of the territory west of the Blue Ridge Mountains, the limits of those counties extending always to the North Branch of the Potomack and to the Fairfax Stone, and in some instances calling for the line running from the Fairfax Stone to the head springs of the Rappahannock as run by the Commissioners who marked the boundaries of the Fairfax grant. The General Assembly of Virginia, October, 1748, passed "An act for confirming the grants made by his Majesty within the bounds of the Northern Neck, as they are now established." Acts 1748 ch. 55. 6 Hen. St. at large p. 198.

This act recites, "Whereas, in the late dispute and controversy touching the limits and boundaries of the several letters patent granted by their late majesties King Charles the Second and
52 King James the Second, unto the ancestors of the right honorable Thomas Lord Fairfax, it hath been adjudged and determined by his present majesty in council, that the said letters patent do include all that tract or territory of land between the rivers Potomack and Rappahannock and the line now marked from the head spring of the said river Potomack to the head spring of Rappahan-

nock, commonly called the Conway, in which said tract or territory of land as is before described, many adventurers and planters have taken up great quantities of land and obtained grants and patents thereof from the Crown under the seal of the Colony; and, whereas, the said Thomas Lord Fairfax hath consented before the King in council that the several grants and patents made by the Crown of the lands included in the boundary aforesaid should be confirmed to the several grantees, their heirs and assigns, to be held nevertheless of the Lord Fairfax, under the like rents, services, profits and emoluments, as should be paid, done and arise by and from the said grants made by the Crown," then enacts that all the grants and patents under the seal of the Colony for lands in said boundary "as the same are now settled and determined" shall be valid and effectual, etc.

By "an act for safe keeping the land papers of the Northern Neck in the Register's office," passed by the General Assembly of Virginia in October, 1785, it was enacted that all the records, documents and entries of the lands within the district of the Northern Neck should in the future be in the keeping of the Register of the land office in Richmond, etc., etc., and that "from and after the passage of this act the unappropriated lands within said district shall be subject to the same regulations, and granted in the same manner, and all *caveats* shall be proceeded upon, tried and determined, as is by law decided in cases of other unappropriated lands belonging to this Commonwealth." And "that the land holders within said district of Northern Neck shall be forever hereafter exonerated and discharged from composition and quit rents, any law, usage or custom to the contrary notwithstanding."

Formation of Counties.

That portion of the Northern Neck which lies northwest of the Blue Ridge Mountains prior to 1738 had been embraced within the limits of Orange county, Virginia. In 1738 the General Assembly of Virginia passed an act creating the counties of Augusta and Frederick. This act recites that "great numbers of people have
53 settled themselves of late upon the rivers Sharando, Cohungoruton and Opeckon and the branches thereof on the northwest side of the Blue Ridge Mountains," etc., and enacts that "all that territory and tract of land at present deemed to be part of the county of Orange, lying on the northwest side of said mountains extending from thence northerly, westerly and southerly beyond said mountains to the uttermost limits of Virginia be separated from the rest of said county and erected into two distinct counties and parishes, to be divided by a line run from the head springs of Hedgemore river *to the head springs of the river Potomack;* and that all that part of said territory lying to the northeast of said line beyond the top of the Blue Ridge shall be one distinct county and parish to be called by the name of the county of Frederick and parish of Frederick; and that the rest of said territory lying on the other side of said line beyond the top of the said Blue Ridge shall be one distinct

county and parish to be called by the name of the county of Augusta and parish of Augusta."

Surveys Made for Lord Fairfax on Upper Potomack.

Lord Fairfax came over from England in 1745 and settled permanently in Virginia at "Belvoir" on the Potomack a short distance from Mt. Vernon, the home of the Washingtons. And in 1747 after the boundary question had been settled and the Fairfax Stone planted, he sent George Washington, then a youth of 17 years, and other surveyors to survey and lay off his lands west of the mountains. Washington was for two or three years engaged in this work and made a number of surveys along the Wappacomo or South Branch of the Potomack, some of which lay in what are now Hampshire, Hardy, Grant and Mineral counties, West Virginia, and are in the territory claimed by the State of Maryland in this suit.

See Sparks Life of Washington, pages 12 and 13.

Fairfax Death.—Greenway Court.

Fairfax laid off for himself 10,000 acres 13 miles below Winchester, called it Greenway Court Manor, built himself a home and removed thither in —— and here he continued to live until his death in 1781.

Settlement of South Branch Country.

The fertile lands along the Cohungoruton and Wappacomo or South Branch had attracted settlers before the Northern
54 Branch was surveyed and its boundaries settled as above mentioned, but the savage Indians disputed every inch of this splendid country and many sanguinary battles were fought with them. The settlers built forts at various places along these rivers, the sites of which can be still pointed out, and gradually the country was taken possession of by the whites. In 1753 the country had become so well populated that the General Assembly passed an act in that year creating the County of Hampshire out of the western part of Frederick and Augusta. See 6 Hen. St. at large 376.

Hampshire County Created.

This act recites that whereas, part of the county and parish of Augusta lies within the bounds of the territory or tract of land called the Northern Neck belonging to the right honorable Thomas Lord Fairfax, Baron of Cameron: and it will be more convenient if the *dividing line between the said territory and the other part of this Colony* be established *as the line of the said county*, and that part of the said county be added to the county and parish of Frederick; and whereas, the said county and parish of Frederick are of a very long and large extent and inconvenient to the inhabitants thereof, then

enacts that on the 1st day of May next ensuing all that part of the county of Augusta which lies within the bounds of the Northern Neck be added to and made part of the county of Frederick, and that from and immediately after the said first day of May the said county of Frederick and said part of the county of Augusta so to be added to and made part of the county of Frederick as aforesaid, be divided into two counties, and that all that part thereof lying to the westward of the ridge of mountains commonly called and known by the name of Great North or Cape Capon Mountains and Warm Spring Mountains *extending to the Potomack river* be called and known by the name of Hampshire; and all that part thereof lying to the eastward of the said ridge of mountains be another distinct county and retain the name of Frederick.

Boundaries and Jurisdiction of Hampshire County.

Thus the county of Hampshire was made to embrace all the territory within the Northern Neck, lying west of the Great North or Cacapon Mountains and Warm Spring Mountains and extending from the Great North or Cacapon Mountains with the Potomack river to the "Fairfax Stone," and thence by the line run by the Commissioners from said stone to the head of the Rappahannock
55 and embraced all the territory now included in the counties of Hampshire, Hardy, Grant and Mineral.

Hampshire is the oldest county now within the limits of West Virginia by 25 years. It was created twenty-five years before the Revolution. The county seat was established at Romney on the South Branch of the Potomack, about 20 miles above its mouth, and the county authorities exercised exclusive jurisdiction over all the territory south of what Maryland calls the North Branch of the Potomack to the line of the Northern Neck, which had been established by the King between the Fairfax Stone and the head of the Rappahannock.

Hardy County Created.

Hardy county was formed in 1785; 12 Hen. St., p. 86, the act creating it providing that "the county of Hampshire shall be divided into two distinct counties by a line *beginning at the North Branch of Potomack opposite to the mouth of Savage River* and running thence in a direct course, so as to strike the upper end of the plantation known by the name of Myer's Mill, on New Creek, thence by a direct course to John Lewis' Mill, on Patterson's Creek, thence in a direct course to the highest part of the mountains known by the name of High Knob, thence, etc., etc., and all that part of the said county lying south of said line shall be called and known by the name of Hardy."

The "mouth of Savage River" is just above the town of Piedmont in what is now Mineral county, West Virginia. New Creek rises in what is now Grant county, West Virginia, and runs northward through Mineral county and empties into the Potomack, or North

Branch of the Potomack at Keyser, the county seat of Mineral county, 23 miles above Cumberland, Maryland. Patterson's creek rises far south in Grant county and runs northward through the eastern part of Mineral and empties into the Potomack or North Branch about eight miles below Cumberland, Maryland, and about ten miles above the mouth of the South Branch.

Hampshire County Enlarged.

Hampshire county was enlarged by an act passed in 178–, 12 Hen. St. at large 597, providing that "all that part of Hardy county lying north of a line to be run from the mouth of Stony River to the High Knob shall be and the same is hereby added to and made part of Hampshire county."

56 *Mineral County Formed.*

Mineral county was formed in 1867 (after the creation of West Virginia) out of the western part of Hampshire county. The county seat is at Keyser, on the Potomack or North Branch, at the mouth of New Creek. It is a town of nearly 2,500 people and Piedmont, in the same county, about five miles above Keyser, is also a flourishing town of over 2,000 people, and Elk Garden is a thriving mining town in the same county right near the Potomack, or North Branch, and has a population of about 1,500, the population of the county by the census of 1890 being 12,085.

Grant County.

Grant county was formed out of the western part of Hardy county in 1866. (See Acts 1866, ch. 29). The boundaries of Grant county as set out in said act are as follows: "Beginning at the Fairfax Stone at the junction of the line between West Virginia and Maryland, corner to said county of Hardy, and with the said boundary line down the North Branch of the Potomack to the Hampshire (now Mineral) and Hardy county line; then with the said line southeastward, crossing Patterson Creek mountain, etc., etc."

The "Fairfax Stone" is therefore its northwestern corner. It had a population of 6,802 in 1890. Its county seat is Petersburg on the western bank of the South Branch of the Potomack.

Pendleton County.

Pendleton county was formed from Augusta, Hardy and Rockingham counties in 1787. The county seat is Franklin which was founded in 1794. The population in 1890 was 8,711.

Monongalia County.

Monongalia was the first county formed after the Revolution. It was created by an act passed in 1776 by which its boundaries are defined as follows: "All that part of said district lying to the northward of the county of Augusta to the *westward of the meridian of the fountain of the Potomack* to the southward of the county of Yogohania and to the eastward of the county of Ohio.

Harrison County.

Harrison county was formed from Monongalia in 1784 by an act providing that "the county of Monongalia shall be divided
57 into two distinct counties by a line *beginning on the Maryland line at the Fork Ford on the land of* John Goff, thence a direct course to the head waters of Big Sandy Creek thence, down said creek to Tygarts Valley Fork of Monongahela river, etc., etc.

Preston County.

Preston county was formed from Monongalia in 1818. The line running from Fairfax Stone to the Pennsylvania line is its eastern border line and the Fairfax Stone is the southeastern corner of said county. The population of Preston in 1890 was 20,355.

Tucker County.

Tucker county was formed from Randolph in 1856 and the "Fairfax Stone" is a point in its boundary. The boundaries of Tucker county as set forth in said act are as follows: "That so much of the county of Randolph as is contained within the following boundary line, to-wit: Beginning at Fairfax Stone and running thence with the division between Hardy and Randolph counties to the corner of Pendleton county, thence * * * to the corner of Preston county and with the line of Preston county to the beginning, shall form one distinct and new county and shall be called and known by the name of Tucker county. Its population in 1890 was 6,459.

The towns of Thomas with several hundred inhabitants and Davis with at least 2,000 inhabitants and several flourishing villages along the West Virginia Central and Pittsburg R. R. are situated in this county just South of the Fairfax Stone and have all grown up within the last ten years. The said West Virginia Central and Pittsburg R. R. was built within the last twelve years along the North branch of the Potomack river, extending from a point on the Baltimore and Ohio Railroad on the South side of said North Branch about a mile above the town of Piedmont, in Mineral county, West Virginia, along the course of said North Branch passing within a very short distance of the Fairfax stone and crossing the Alleghaney mountains just south of said stone to Elkins in Randolph

county. The railroad crosses the North Branch at several points along its route and runs some distance on the north side of the river. This railroad was constructed under a charter granted by the Legislature of West Virginia so far as it lies south of said North Branch and under a charter issued by the State of Maryland so far as it lies north of said North Branch. (See chapter 85 acts 1866 and chapter 50 acts 1881 of the Legislature of West Virginia.)

58 The Baltimore & Ohio Railroad, which enters West Virginia at Harper's Ferry, follows the course of the Potomack river from a point above Martinsburg to the mouth of the Savage river, about one and one-half miles above the town of Piedmont. It runs along the south bank of the river to a point near the city of Cumberland, Maryland, where it crosses to the west side of the river and then continues on the north side until within three miles of Keyser in Mineral county, West Virginia, where it recrosses to the south side, and continues on that side to a point above Piedmont about one and one-half miles, where it again crosses and leaves the river and begins to ascend the main ridge of the Allegheny Mountains. The Baltimore & Ohio Railroad Company, was chartered by the states of Maryland by act of February 28, 1827, and of Virginia by act of March 8, 1827, and by act of March, 1847, page 86, the company was authorized to complete its road through the territory of Virginia over a route thereby prescribed. And, so far as said railroad was constructed north of the Potomack river, it was constructed under the authority of Maryland, and, so far as it was built south of said river, it was done under authority of Virginia.

The same is true of the Piedmont and Cumberland Railroad which has been built within the last ten years from a point about one mile above the town of Piedmont to the city of Cumberland along the North Branch of the Potomack, crossing and re-crossing said river several times. It was built and is operated under charters granted by both States.

Possession and Jurisdiction of Virginia and West Virginia.

The State of West Virginia says that from the foregoing recital of facts this court will see that the territory claimed by the State of Maryland in her said bill of complaint, was in 1745, solemnly decided by the King in council to be within the boundaries of the colony of Virginia, and, has been under the exclusive sovereign jurisdiction and control, first, of the colony of Virginia and then of the Commonwealth of Virginia; and since January 20, 1863, of the said State of West Virginia, before and since the survey of the Potomack river in 1736, by said commissioners and up to the present time. The courts of Virginia and West Virginia have administered the laws of said states in said territory ever since it came under the dominion of the white people. Their state and county governments have alone been recognized by the people residing in said territory, who have voted for and elected the county officers of said

59 states and members of the Legislature of said states and Representatives of Virginia and West Virginia in the Congress

of the United States. The inhabitants of this territory have paid State and county taxes levied under the authority of said States of Virginia and West Virginia, whilst the State of Maryland has never had or exercised any sort of jurisdiction or control over any part of it, or of the inhabitants thereof; no writs from her courts have run or been served in said territory; no taxes of any kind have ever been levied by her there, or paid by the inhabitants to her, nor have any of her officers been voted for or elected by said inhabitants within the said territory. The Fairfax stone has been a point in the boundaries of the counties of Virginia ever since the formation of Frederick and Hampshire counties in 1753, and is now a point in the boundaries of the counties of Grant, Tucker and Preston in West Virginia and also of Garrett county in Maryland, as will be more fully shown hereafter.

At the time the first charter of Maryland was granted and for many years afterwards, all this territory was entirely unknown to the white people; it was an unbroken primeval forest, the abode of savage men and wild beasts.

After the year 1720 white settlers began to locate in this favored region and gradually the territory became settled up with a hardy, thrifty and intelligent population and to-day, the territory claimed by the state of Maryland is one of the most populous and thriving parts of the state of West Virginia. A number of large towns, and villages are to be found within it and its fertile valleys and its hills and mountain sides are filled with people who and whose ancestors for several generations have adhered to and given allegiance only to Virginia and West Virginia.

Wherefore the State of West Virginia claims and pleads the said long continued, adverse and exclusive possession of and jurisdiction and control over the said territory by her and by Virginia under color and claim of title as a full and complete answer and defense to the claim set up by the state of Maryland in her said bill to said territory and she asks that she may be given the benefit of all the legal presumption and rights arising from said possession and control.

Construction of Maryland Charter.

The State of West Virginia further answering says that by no proper or correct construction of the charter granted by King Charles I. to Lord Baltimore in 1632 can the state of Maryland clai.n to extend her western boundary to the source of the south branch of the Potomac river. The territory granted by said charter is thus described in it according to the translation of Mr. Tomlins above mentioned, and there is but little difference in any of the received translations, viz.: "All that part of the Peninsula or Cheronese lying in the parts of America between the Ocean on the east and the Bay of Chesapeake on the west, divided from the remnant of the same by a right line drawn from the promontory or head of land called Watkins Point, beside the bay aforesaid, situate near the river of Wigheo, on the west, as far as the great ocean of the

eastern coast, and between that boundary on the south as far as to that part of the estuary of the Delaware on the north which lieth under the fortieth degree of north latitude from the equator where New England is bounded; and all that tract of land within the boundaries underwritten, that is to say, going from the said estuary, called Delaware Bay, in a right line in the degree aforesaid to the true meridian of the first source of the river Pottowmack, then tending downwards towards the south to the farther bank of said river and following it to where it faces the western and southern coast as far to a certain place called Cinquack, situate near the mouth of the same river, where it discharges itself into the forenamed Bay of Chesapeake and from thence, by the shortest line as far as to the aforesaid promontory or place called Watkins Point."

The western boundary of Maryland, according to this charter, was to be found by following the 40° from the Delaware Bay to the meridian of the first source of the Potomack river and then tending downwards towards the south to the farther bank of the said river and following it, etc. The 40° was the extreme northern boundary of the Virginia and the extreme southern boundary of the New England Colony. After Lord Baltimore's charter was granted, the territory between the 40° and the present Mason and Dixon's line—the present northern boundary of Maryland—was embraced in the charter of Pennsylvania granted to William Penn, and Lord Baltimore, after a long contest, was compelled by the King to give it up to Penn, as will be more fully shown hereafter.

This charter to Lord Baltimore is to be interpreted in the light of the knowledge and information possessed by the parties to it when it was granted so as to get at the understanding and intention of said parties.

61 *Territory Unexplored and Unknown.*

At the time this charter was granted the Potomac river had not been explored farther than the great falls. The only exploration of that river before that time of which any account remains was that made by Capt. John Smith in 1608, and he only proceeded thirty miles up the river. After exploring the country in various directions Smith went to England and in 1629 published his general history of Virginia, etc., together with a map of the country. A copy of said map is filed herewith as part of this answer, marked Defendant's Exhibit C. The portions of the country which had been explored by Smith and other white men is accurately laid down on the map, whilst the rest of the country was laid down merely from information he had obtained from the Indians. The general direction of the Potomac River as given on this map is a northwesterly direction. No tributaries appear to it until near its source, where two branches are laid down in an uncertain and rather fanciful manner.

John Smith's History and Map.

The history and map were the only information that the King and Lord Baltimore had of the country at the time the latter's charter was granted. And it is evident that this map was the guide to which they must have referred in drawing said charter as the names of the places and the orthography plainly show. The Potomac River is represented on said map as rising in the northwest near the 40° of latitude, and the mountains are represented as rising further towards the west and north. The King did not intend that Baltimore's charter should encroach upon the boundaries of the New England Colony, consequently it was provided that it should follow the 40° of latitude. He did not *know* where the first fountain of the Potomac was—whether north or south of that degree, but it seems probable that he *believed it was north of said degree.* But being uncertain as to this he provided that the 40° should be followed, not to the Potomac, nor to the first fountain of the Potomack but to a meridian line drawn through said first fountain, because if it should turn out that said fountain was north of the meridian, the line would run into the territory of New England, but it says, then tending to the south to the farther bank of said river. The first fountain of the Potomac was believed to be north of 40°. It is evident therefore that the parties to said charter understood and believed that the first source of the Potomac was
62 near the 40° of latitude and they intended that the northern line should extend to that meridian of that fountain which was near said 40°. That it was the general belief and understanding that the source of the Potomac was north of the 40° degree is shown by the correspondence between Lord Baltimore and Governor Sharpe during the former's controversy with Wm. Penn about the boundary between Pennsylvania and Maryland as late as 1754. (See letter of Calvert to Sharpe dated January 5, 1754, on page 17, Archives of Maryland, correspondence of Gov. Sharpe). And the map of Augustine Herman made in 1670 especially for Lord Baltimore and as a means of advertising his colony also represents the Potomac as flowing from the northwest and as rising very near the 40°. See copy of this map, which is filed herewith as part of this answer, marked Defendant's Exhibit B. And in the instructions given to the surveyors who surveyed the Northern Neck in 1736-7, they were "directed to take the latitude and observe particularly where said river" (the Potomac) "intersected the 40° degree. This shows that more than a century after the date of the Maryland charter it was believed by Fairfax and the Virginians that the source of the Potomac was north of the 40°. The King therefore in granting this charter never intended that its boundary should extend a hundred miles south of the 40° north latitude (Byrd's manuscript). At the time the charter of Maryland was granted that the Potomac was unknown above the falls. Afterwards it was found that the river extended beyond the Blue Mountains and divided into two branches at what is now Harper's Ferry

—called the Cohungoruton and the Sharando—and in 1736 the said commissioners took the affidavits of Thomas Harrison, who testified that he had lived 40 miles below the Falls of the Potomac since he was a child, that he was then 63 years old, that 50 years before that date, 1736, the Falls were unknown as ever he had heard of. But about 36 or 37 years before he had heard people talk of going up there to fish but he never heard that any one ventured up to the Falls until about that time, that he had heard of the Falls about 50 years.

South Branch Had a Different Name.

The name Cohungoruton was applied to all that part of the Potomac extending from the confluence with the Sharando, to the source at the Fairfax stone. The South Branch had an entirely different name being called the Wappacomo. See the map and report
63 and proceedings of the commissioners who laid out the Northern Neck in 1736. Map of Fry and Pierre Jefferson published in 1755, and the map made and published in —— called "A map of the country between Albemarle Sound and Lake Erie, comprehending the whole of Virginia; Maryland, and Delaware and Pennsylvania with parts of several others of the United States of America. Engraved for Thos. Jefferson's Notes on Virginia." Copies of said map are filed herewith as parts of this answer. Marked defendant's exhibit B, F and G respectively.

North Branch Wider and Deeper at the Confluence.

Again at the mouth of the South Branch and for several miles above it the Potomac proper or North Branch is now the wider and deeper stream, and it was so in 1737 when the survey of the Northern Neck was made. See report of the late Hon. Charles J. Faulkner to Gov. Floyd, of Virginia, made in 1832; found in Lewis' History of West Virginia, ch. 17. Also in Kercheval's History of the Valley, &c.

Mr. Faulkner returned with his report many valuable historical documents bearing on this boundary question as will be seen from his report. Among said documents was "No. 12 original letters from John Savage, one of the surveyors dated January 17, 1737, stating the grounds upon which the commissioners had decided in favor of the Cohungoruton over the Wappacomo, as the main branch of the Potomac. The former he says is both deeper and wider than the latter;" and also "No. 13, letter from Charles Carter, Esq., dated January 20, 1537, exhibiting the results of a comparative examination of the North and South Branches of the Potomac. The North Branch at its mouth, he says is twenty three poles wide; the South Branch sixteen, etc."

Mr. Faulkner also returned No. 10, the original field notes of the survey, of the Potomac river from the mouth of Shenandoah to the head spring of the said Potomac river by Benjamin Winslow, one of the surveyors in 1736-7.

Unfortunately these and the other documents returned by Mr. Faulkner have all been lost or destroyed during the late war and the State of West Virginia is unable to produce them, but she offers the said report of Mr. Faulkner as the best historical evidence of the facts stated therein which can now be obtained.

North Branch the Straight River at Confluence.

64 And the State of West Virginia further says that besides being deeper and wider at the mouth of the South Branch and for a long distance above it, the North Branch is the straight river at the point of confluence of the North and South Branches, the general course of both the valley and the river are the same for some distance below and above the mouth of the South Branch and the latter flows into the former almost at right angles. The valley of the North Branch is plainly a continuation of the valley of the Potomac river below the mouth of the South Branch extending in the same northeastern direction for many miles; the valleys of the South Branch, of Pattersons Creek, and of New Creek, and of Great Cacapon and Little Cacapon are all parallel with each other and extending almost at right angles from the Potomac river proper.

South Branch but a Tributary.

The South Branch bears to the Potomac river exactly the same relation that Pattersons Creek and New Creek and Great Cacapon and Little Cacapon bear—they are all manifestly but tributaries of the main river as it is formed by nature. It is larger and deeper than the latter streams but otherwise is like them in general appearance and in the direction it flows and the manner in which it empties into the main, continuous stream.

North Branch Called the Potomac.

In this answer all that part of the Potomac river above the mouth of the South Branch is spoken of as the North Branch for the sake of convenience, but in point of fact all that part of said river extending from the mouth of the South Branch to about the town of Piedmont in West Virginia and Westernport in Maryland, about 30 miles above the city of Cumberland, Maryland, is known as, and called by the inhabitants of that country, the "Potomac River." As you ascend the river from Piedmont it begins to be known as the North Branch and is generally so called as it flows through the Alleganey mountain region. But that part of the river between the mouth of the South Branch and where Piedmont now stands has always been called the Potomac river since the name Cohungoruton was dropped which seems to have been in the latter half of the 18th century. On the other hand the South Branch, ever since the Indian name of Wappacomo was dropped, has been known and called by no other

name except the "South Branch" throughout its whole course from its mouth to its source.

65 *Topography of the Country.*

The general course of the Potomac river and valley from the mouth of the Shenandoah to where it strikes the main Alleganey mountains at Piedmont is northwesterly. The country through which it extends consists of alternate mountains, or ranges of hills and valleys running in a northeast and southwestward direction, parallel with the main Allegany range, and the Potomac river and valley cut across these mountains, hills and valleys almost at right angles. These intersected valleys are drained by streams that follow their course and empty into the main river. The South Branch is one of these streams and though it is larger and longer than any of the others, in other respects it is exactly like them.

The Potomac river rises out of the main Alleganey mountains and persistently cuts its way across the small intervening mountains and hills, which have the same general direction as the great Appalachian chain, in a south-eastern direction towards the sea; the South Branch is but one of the many streams that flow into it, it is but an arm of the main body, and though it is a large arm and is longer than the main trunk from the point of junction with that trunk to the head, yet that fact does not make it the main body, and the head of the body will not be sought for at the extremity of the arm simply because of the length of the arm.

The state of West Virginia therefore insist that the King in Council correctly decided in 1745 that the head of the North Branch was the first source or fountain of the Potomac river, and she insists that said North Branch is the Potomac river mentioned in the charter of Maryland, and that Virginia and West Virginia have lawfully and rightfully had possession of and exercised sovereign jurisdiction and control over all the territory south of said North Branch and west of the meridian drawn from said Fairfax Stone to the Pennsylvania line.

King's Decision Binding on Lord Baltimore.

The state of West Virginia further answering says the said decision of the King in Council as to the location and boundaries of the Fairfax title was conclusive and binding upon the Lord Proprietor of Maryland and upon all the world. The King had exclusive jurisdiction of all questions relating to the boundaries of the colonies and had absolute power to fix such limit as he thought proper to the territories of the several colonies. Charles, Lord Baltimore, who was the Lord Proprietor of Maryland when said
66 proceedings were had and who lived six years after that, never questioned either the justness or the propriety of that decision, although he had notice of the proceeding and was present at the hearing before the king. He might have asked for commissioners to act on his behalf in that proceeding if he had deemed it

necessary or advisable, but he evidently considered that his interests would be safe in the hands of the king as against Lord Fairfax.

Lord Baltimore Declines to Reopen the Question.

Charles Lord Baltimore, was succeeded in about 1751-2 by Frederick Lord Baltimore, and in 1753 he appointed Horatio Sharpe, Governor of the Colony of Maryland. At that time Lord Baltimore was in the midst of his controversy with Penn, in regard to the boundary line between Maryland and Pennsylvania. Penn was claiming the right to territory lying south of the 40° parallel, and Baltimore was vigorously resisting this claim, and, as his charter was the older, insisted on holding up to that degree of latitude according to the calls of his charter. But the King was favoring Penn, and it seems had ordered a temporary line to be run for the peace of the two provinces. Baltimore was very anxious that this line should be north of the heads of the Potomac and other rivers flowing into the Chesapeake Bay, otherwise the Pennsylvanians would claim the right to navigate those rivers. Gov. Sharpe had evidently been instructed to inquire into these matters. And in the correspondence between Sharpe and Baltimore, in relation to the matter, the former made the first suggestion that was ever made, so far as appears to this respondent, that a mistake had been made by the King in fixing upon the North instead of the South Branch as the Potomac River, and he endeavored to get Lord Baltimore to reopen that question. But the latter declined to do so unless both Lord Fairfax and the Governor and Colony of Virginia, would consent to it. This consent was not obtained and consequently no action was taken by Baltimore, all of which will more clearly and fully appear from the correspondence between Gov. Sharpe and Lord Baltimore, which is published in the "Archives of Maryland" in the volume entitled, "Correspondence of Governor Sharpe—1753-1757." The following abstracts from said correspondence sustain the correctness of the above statements:

Correspondence Between Baltimore and Gov. Sharpe.

In a letter from Sharpe to Cecilius Calvert, (the secretary
67 of Lord Baltimore, it is presumed), dated August 20, 1753, speaking of the Pennsylvania boundary matter, Sharpe says:

"It is to be observed that the temporary line is drawn 15 miles south of the most southern part of Philadelphia, which takes away from his Lordship much good land. It would be of great advantage and it is much to be wished you could continue the line due north (after it has touched the circle), to the 40° or at least 39° 56′.

A line due north on that latitude will run a little north of one of the bendings of the Potomack, much depends thereon in respect to the boundary with Lord Fairfax for by what I have yet seen I doubt that Branch which runs about 8° west by the Alleghaney mountains will be deemed the Fountain head of the Potomack, etc., is to be de-

sired if you could obtain said latitude of 39° 56′ and his Lordship will even then be considerable looser according to his first grant nor will you then be within 15 miles of Philadelphia, altho' to the northward of the latitude thereof.

It is impossible to fix how far north would be a good boundary for Maryland, on account of the uncertainty of the draughts and impracticability of making observations and remarks necessary for that advice. I can only say what you know that the more northward the better," pages 1 and 2.

Letter from Sharpe to Calvert, September 14, 1753, page 5, speaks of Mr. Emory's return from running the north line, and sends Emory's plat with his remarks and observations; in his remarks, he says:

"The north line will not touch the heads of any rivers, nor will the circle around Newcastle, as run by Mr. Dalker in 1732, affect the head of the bay, or any of the rivers as far as he is capable of judging," etc., etc.; "but," Sharpe continues, "opinions you see and a few inaccurate observations are the best guides we yet have, and I see no probability but of remaining still in the dark, unless the Penns will give free liberty to execute what the council have thought necessary to be performed," etc., etc. "Mr. Cresap gave it as his opinion to the council, that the temporary line is to the northward of any bendings of the river Potomac, and that the South Branch runs 60 or 80 miles farther west than the head spring of the Northern Branch, upon which representation of his by advice of the council, I have wrote the following letter to Lord Fairfax," (see letter, post).

"If you can obtain from Messrs. Penns to go to the latitude of 40° upon Susquehanna in order to run a west line thence for your northern boundary, you may give up so much of the eastern side of that river as lies north of the temperary line;" * * * "and several plans and observations being laid before us, we are of opinion
68 that so much uncertainty appears at present, as will with respect to the heads of the rivers running into Chesapeake Bay, as to the circle of Newcastle and the latitude of the most northern bend of the Potomac, that we would not presume to advise any particular boundary unless a due north line could be run from the middle of such an east and west line, as may be agreed on between the proprietors across the Peninsula, as also a due west radius run from the centre of the circle of Newcastle and the latitude of the most northern bend of the Potomac be taken by observation."

The following is the letter written by Governor Sharpe to Lord Fairfax, as stated in his letter to Calvert, of Sept. 14, 1753:

"Lord Baltimore was pleased to charge me with an enquiry into the true meridian and place of the Fountain Head of Potomack. The best information I have been hitherto able to procure gives me reason to believe there has been a mistake in fixing the spring head of the North Branch, since the length with the other circumstances more properly denotes the Southern Branch, commonly called Wappacomo, to be the main and principal course of that river. I am the more willing to be persuaded of the truth of this representation from the considerable advantage that will accrue to your Lordship.

That Branch I am informed has never been thoroughly explored and traced to its source, but I flatter myself with having your Lordship's concurrence for such an examination into its course, length, width and depth as may bring this matter to a nearer degree of certainty, and if that should appear to be the Fountain Head of the Potomack River, I shall not question but your Lordship will be for taking such measures as may ascertain the mutual limits of the two Proprietorships Agreeable to the direction and true intention of their respective charters."

Lord Fairfax's reply to this letter is dated September 24, 1753—page 7—in it he uses this language:

"I am entirely (satisfied) that the south would be much to my advantage and therefore think it improper for me to appear therein, and that the Governor of Virginia and your Excellency should transact that affair. If his Lordship should obtain his demand, I must insist upon a new line between his Majesty and me to the southward."

On the 29th of November, 1753, Sharpe writes to Calvert informing him that he had received the above reply from Fairfax, and continues, page 14:

"My intent to examine the two Branches of Potomack I have hinted to the Governor of Va. and writ to Col. Cressop to know whether he will undertake that business or not and return
69 me an accurate description of their courses, rapidity and depth and the latitudinal difference of the places of the spring heads, but I suppose the severity of the winter will hinder him from proceeding on those enquiries this three or four months at least."

January 5, 1754, the first reply of Lord Baltimore to any of the foregoing letters from Governor Sharpe was written. It is dated London, January 5, 1754, and is written by Calvert to Sharpe. He first acknowledges receipt of the above letters of August 22 and September 14, and after speaking of the Penn boundary matter, says (see pages 18 and 19:

"My Lord approves of yr endeavor with Lord Fairfax in Virginia to fix the Branch of Potomack River by another Branch runs southwest, it will enlarge and extend Maryland much more than the Branch runs northwest and it will advantage Lord Fairfax as to his particular tract of land, yet it will be very difficult to gain the Colony of Virginia's consent to resettle, as it will be the loser by altering the course of the river, which has been settled by order of the Crown and of which the late Lord Baltimore had notice and was present with Lord Fairfax at the hearing before the Council, whose report the King confirmed and accordingly the spring head has been determined by the Virginia Commissioners Exparte with Maryland Commissioners Lord Baltimore praying none. Lord Fairfax and the Colony of Virginia's Charter of the courses of the Rappahannock and Potomack the latter fixed boundary bet. Maryland and Virginia accordg to the order of the King and Council in 1736 and 1737." * * * "His Lordship desires you to obtain Col. Cresop's opinion certain by observation of the North temporary line, etc., etc.," and then speaks of the importance of the location of the North bend of the Potomack, and says, "If the bend is over the line the Pennsyl-

vanians will claim water passage to the spring Head and on that River, it is of consequence to know upon settling the North temporary line," etc.

Letter from Sharpe to Calvert dated London, April 17, 1754—page 44 *et seq.*

On page 49 is the following:

"By Lord Fairfax's letter to you his lordship declines having to do with any resettlement of the course of the Potomac river. The branch called the South Branch which you seem to apprehend will be much more beneficial to Maryland, as in length south-westward, will depend on proof, as its fountain head instead of the spring head of the said river, determined by the Virginia commissioners in 1736 and 1737. If the South Branch runs as you apprehend, it
70 will certainly be of great advantage to the encrease of Maryland, and also may be to Lord Fairfax' tract of land by the spring head of the Potomac lying more westward than the determined head of Potomac as above settled.

However you ought, before you make an attempt, to be well grounded how the inclinations of the Governor, the Virginians and Lord Fairfax stand, to a new settlement of the course and fountain of Potomac with Maryland. If they oppose, the Crown, it is most likely, will side with them. The tryal of the south Branch of Potomac as to its advantages as may turn out, his lordship is not against Mr. Cressaps essay therein: provided he does not bring upon him too great cost thereby of which, if you find it absolutely necessary to send him; you must bargain with him reasonably."

Letter from Sharpe to Calvert January 6, 1754, page 70.

"It is owing to Col. Cressaps absence from home among the Virginians on Ohio, that I am not able yet to comply with your requisition concerning the latitude of the most northern bend of the Potomac. I some weeks since writ two letters desiring him to return me a copy of his map of that river signed and authenticated, which I will transmit with the description of distances and bearings of the river heads on the eastern shore as soon as the surveyors make their return which I expect in about 3 weeks or a month at farthest.

P. S.—I have this instant received a letter from Col. Cressap with the plan and certificate concerning the North Branch of Potomac and the temporary line as run by him."

See page 72. Letter from Calvert to Sharpe December 10, 1754. See page 130.

"Col. Cressaps map of the North Branch of the Potomac river with respect to the north temporary line removes the doubt of the bend touching the line, there being south of the line considerable distance of country between the line and the head, admitting extensive passage to the spring head of that river." * * * "The observation in 1669 at Newcastle and also the act of Virginia concerning the north boundary is of service as it points the opinion of that colony about the north line of Maryland, out of which the latter was taken, etc., etc.

Observation on the Correspondence.

From the foregoing correspondence it appears that Gov. Sharpe had been led to believe from information received from Col. Cresap that the South Branch was the larger stream and that its source was further west than that of the North Branch, and that the interest of his patron, Lord Baltimore, would be much advanced if a re-settlement of the location of the head spring could be brought about, and that he was quite active in endeavoring to bring this about, but that Lord Baltimore was not impressed with the idea and had but little faith in being able to accomplish anything in that direction,
71 and that he recognized that the decision in Fairfax's case was so far conclusive and binding upon him, that unless the consent of Lord Fairfax and of the Governor and of the Colony of Virginia could be obtained, it was useless to attempt to reopen and resettle the question; and he would not even consent that Col. Cresap should investigate the matter unless he would make a bargain beforehand that it should not bring very much costs upon his lordship. Sharpe was very active, and says in his letter of No. 29, 1753, above quoted, that he had hinted to the Governor of Virginia his intent to examine the two branches of the Potomac. But the Governor of Virginia never consented to have the question re-opened and Lord Fairfax refused to have anything to do with it. Consequently, nothing was done by Lord Baltimore. Whether Col. Cresap was ever employed to survey the two branches of the Potomac with a view to this question, this respondent is not informed and has not found anything to show that he was. It has been claimed that the map made by Col. Cresap, which is to be found on page 72 of the Volume of the Archives of Maryland from which the above correspondence is taken, was made at the instance of Lord Baltimore to be used in setting up a claim that his boundary extended to the meridian of the South Branch of the Potomac. But it seems that such was not the case. It will be seen that in the letter of Calvert to Sharpe, dated January 5, 1754, and from the whole correspondence; that Lord Baltimore was at that time deeply interested in and concerned about his controversy with Penn in regard to his Northern Boundary and that he was anxious to find the latitude of the most nothern bend of the Potomac River as it had an important bearing on any agreement he might make with the Penns as to that boundary he being unwilling to adopt any line that would strike the Potomac and throw any part of that river within the bounds of his northern neighbor. He accordingly desired his Gov. Sharpe to have Col. Cresap take observation of the north temporary line and ascertain the latitude of the most northern bend of the Potomac. And in Sharpe's letter to Calvert of June 6, 1754, above, he says he has been unable to comply with his requisition concerning the most northern bend of Potomac; that he had some months before written two letters desiring Cresap to return to him *a copy of his map of that river, etc.*, and in a postscript to that letter he says he has just received a letter from Col.

Cresap with the plan and certificate concerning the North Branch of the Potomac and the temporary line as run by him.

72 Now this is evidently the map which is published in the Archives, and it was made for the information of and as an assistance to Baltimore in his controversy with Penn and not with a view to any proceeding against Virginia. That this map was made solely with reference to this controversy with Penn is more clearly shown by the letter from Calvert to Sharpe dated December 10, 1754, page 130 above quoted; he says, "Colonel Cresap's map of the north bend of the Potomac river with respect to the north temporary line removes the doubt of the bend touching the line, there being south of the line considerable distance of country between the line and the bend admitting extensive passage to the spring head of the river." It will be observed that the temporary line is laid down on this map, and it seems clear that this is the map that was referred to in the above correspondence.

No Action Taken Before Revolution.

And the state of West Virginia says that nothing further was done in the matter either by Lord Baltimore, the proprietor of the province of Maryland, or by his governor or colony while said province remained subject to the British crown. No action whatever was taken by Lord Baltimore to re-settle the western boundary while he retained his proprietary rights over the province of Maryland, although he had become advised by Colonel Cresap's map of the facts as to the length and location of the two branches of the Potomac and notwithstanding that the King in Council had full and exclusive jurisdiction of the matter and there was nothing to prevent the institution of proceedings before His Majesty to that end.

And so the matter remained until after the Revolutionary war had ended and in the meantime the Colony of Virginia, as has been shown above, continued to exercise jurisdiction over the territory south of the North Branch, and Lord Fairfax claimed to the boundaries established by the King in 1745, and granted patents for the lands in said territory and surveyed off for his own use large tracts that he called manor lands.

Maryland Land Bounty.

It appears that during the Revolutionary war the state of Maryland by various acts of her General Assembly, agreed to give bounties of 50 acres of land each to her soldiers in said war. And by an Act of 1781, chapter 20, all the lands within the state in Wash-

73 ington county, westward of Fort Cumberland, with certain exceptions specified therein, were appropriated to discharge the engagement of land theretofore made to the officers and soldiers of said state, and the residue to the use of the public, as the General Assembly should thereafter direct.

And by a resolution adopted by the General Assembly of Mary-

land at its April session in 1787, the Governor and Council was authorized to appoint and employ some skillful person to lay out the manors and such parts of the reserves and vacant land belonging to the state, lying to the westward of Fort Cumberland, as he might think fit and capable of being settled and improved, into lots of 50 acres.

Francis Deakins Survey of Military Lots.

In 1788 the General Assembly of Maryland passed an act (Acts 1788, ch. 44) reciting the above mentioned acts and resolution and the appointment of Francis Deakins, and that said Deakins had finished the said survey and returned a general plat of the country westward of Fort Cumberland, on which 4165 lots of 50 acres each are laid off besides sundry tracts which have been patented, distinguishing on the plat those lots which have been settled and improved from those which remain uncultivated; that said Francis Deakins had returned two books entitled A. and B., in which are entered certificates of all the lots before mentioned; that 636 of said lots had been settled and improved by settlers; that there were about 2475 soldiers entitled to said bounty, and that about 100 lots ought to be set apart for the recruiting officers; therefore enacted that 2575 of the aforesaid lots lying in the most fertile part of the country and contained in the following limits, to-wit: beginning at the mouth of Savage River and running with the North Branch of the Potomac River to the head thereof, *then with the present supposed boundary line of Maryland* until the inter-section of an east line to be drawn from *said boundary line* with a North course from the mouth of Savage River, will include the number of lots aforesaid to be distributed by lot among the said soldiers and recruiting officers, and their legal representatives, etc. And also "that the lots so granted to the officers aforesaid shall be adjacent to those hereinafter directed to be distributed to the soldiers, and shall be contained within the following limits, to-wit: by extending the aforesaid north course from the mouth of Savage River, until its inter-section with an east line to be drawn from *the aforesaid supposed boundary line of*
74 Maryland will include the necessary number allowing to each officer or his representatives four lots as aforesaid."

And also further enacted that any of the said lots not therein appropriated should be liable to be taken up in the usual manner by warrants, etc.

Said act continues as follows: "And be it enacted, that the line to which the said Francis Deakin's has laid out the said lots, is in the opinion of the General Assembly, far within that which this state may rightfully claim as its western boundary; and, that at a time of more leisure the considerations of the Legislature ought to be drawn to the western boundaries of the state, as objects of very great importance." Said act further provides that said general plat and books of certificates be lodged in the Land Office, and that said

book of certificates of the 4,165 lots aforesaid be considered to all intents and purposes, as record books of the Land Office.

Deakin's Map, Etc.

A duly certified copy of said map is filed herewith as part of this answer, marked Defendant's Exhibit "H," and also copies of the courses and distances of all the lots in said map, which adjoin the line drawn from the Fairfax stone to the Pennsylvania line, marked Defendant's Exhibit I. The said Francis Deakins, was directed to lay out all the lands in Maryland lying west of Fort Cumberland, and in doing so he ran a due north line from the Fairfax stone to the Pennsylvania line, and laid out the lots as far westward as this line but no further. It will be seen that the boundaries of the lots, the courses and distances of which are filed herewith as above stated, all call for a due north line. This is the line from the Fairfax stone to the Pennsylvania line. And said act of 1788, speaks of this line as the "present supposed boundary line of Maryland," although it states that said line is, in the opinion of the General Assembly, far within that which this state may rightfully claim as its western boundary. This language can not be construed to be the assertion of a claim to go to the head of the South Branch.

First Constitution of Virginia.

The first Constitution of Virginia was adopted June 29, 1776, (1 Rev. Code of Va., page 33). Section 21 of the constitution is as follows:

The territories contained within the charter erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are
75 hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pokomoke with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been made or shall be made thereon. The western and northern extent of Virginia shall in all other respects stand as fixed by the charter of King James the first, in the year one thousand six hundred and nine and by the public treaty of peace between the courts of Great Britain and France in the year one thousand seven hundred and sixty-three, unless by act of the legislature, one or more territories shall hereafter be laid off and governments established westward of the Alleghaney mountains. And no purchase of land shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly."

At the time this constitution was adopted Virginia held up to the North Branch of the Potomac and to the Fairfax Stone and

these were also the boundaries of Maryland and as has been shown above neither Lord Baltimore nor the Colony of Maryland had asserted or taken any steps to assert or establish any other boundaries for that Colony. Virginia recognized the North Branch as the Potomac river; this is the Potomac river mentioned in that constitution of which she retained the free navigation and use with the property of the Virginia shore or strands bordering thereon, and all improvements which had been made and should thereafter be made thereon.

Controversy Over the Southern Boundary.

From the time the charter of Maryland was granted there had been serious controversy between that Colony and Virginia as to the Southern boundary line of Maryland, and this controversy had resulted in several armed conflicts between citizens of the two Colonies. The principal cause of this conflict was the claim of Wm. Claiborne to certain territorial rights granted him by the King of trading with the natives and of the settlement of Kent Island by Virginians prior to the date of the Maryland charter. These controversies and conflicts are a part of the history of the two colonies, and in them was involved also the rights of the respective colonies to the navigation and fishing privileges of the Potomac River. This state of affairs as to this southern boundary continued up to
76 and after the Revolution, and shortly after the close of the war the states of Virginia and Maryland each appointed Commissioners to endeavor to arrive at some adjustment of these difficulties. Maryland appointed Daniel, of St. Thomas Jennifer, Thomas Stone and Samuel Chase, and Virginia appointed George Mason and Alexander Henderson. Upon the invitation of Gen. Washington these Commissioners met at Mt. Vernon and on the 28th day of March, 1785, they agreed on a compact to be adopted by the two states. This compact was approved, ratified and confirmed by the General Assembly of Virginia by an act passed January 3, 1786, which recites the compact in full and is found in 1 Rev. Code of Va. page 53, ch. 18.

The Compact.

This compact in section 6 provides that "the river Potomack shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland and of the United States, etc.

The seventh section provides that the citizens of each state respectively shall have full property in the shores of Potomack river adjoining their lands, with all emoluments and advantages thereunto belonging, etc., but the right of fishing in the river shall be common to and equally enjoyed by the citizens of both the states, etc., etc.

The eighth and ninth sections provided for mutual regulations for preserving the fish, performance of quarantine and keeping open

the channel, and of erecting light-houses, beacons, etc., on the Potomack river.

The tenth section provides for the exercise of concurrent criminal jurisdiction over the river Potomack by both states under certain restrictions.

And the eleventh section provides for the service of process issued in either state upon its citizens on said river, etc. Said compact was also ratified and adopted by the state of Marvland. The greater part of the provisions of this compact had special reference to that part of the Potomac which is navigable and which lies below the limits of the State of West Virginia but some of them applied to that river throughout its whole length, and at the time said compact was made the State of Virginia claimed to the North Branch of the Potomac and it was well understood that said compact related to said Branch and not to the South Branch so far as it was applicable to the river above the junction of said Branches. And the State of West Virginia says that it has been so understood by the peo-
77 ple of said states ever since said compact was made and that both states have enjoyed the rights and privileges upon said North Branch secured by said compact ever since that time and continue to this day to exercise and enjoy them.

The State of Maryland was well aware when this compact was made that the State of Virginia claimed that the North Branch was the Potomac river proper above the mouth of the South Branch. and the former did not insist upon anv rights in or to the South Branch in said compact and by entering into it, she in effect recognized and accepted the North branch as the boundary line between the two states, and it was so understood at that time and has been so understood ever since by the people living along said North Branch and by all the people of said states, and they have constantly acted upon that understanding.

It was after this compact that Francis Deakins laid out the military lots under the authority of the State of Maryland as hereinbefore stated, and in doing so adopted a due north line from the Fairfax Stone as the western boundary of that state. And although the legislature of that state in acting upon his report declared that said supposed boundary line is in their opinion far within that which that state might rightfully claim as her western boundary, yet the language does not indicate that this legislature intended to assert a claim to go to the South Branch, but rather that the Fairfax Stone was not planted at the true fountain head of the North Branch, and that said fountain head was further west than said stone, and at a later date, as will appear hereafter, this very claim was made by said state through her commissioners.

Maryland and Virginia Resolutions for Appointment of Commissioners.

In 1795, in 1801 and again in 1810 the General Assembly of Maryland adopted resolutions providing for the appointment of Commissioners to meet such persons as the state of Virginia should appoint "to adjust and settle by compact the southern and western boundaries of the state and fix the dividing line and boundaries, etc."

The state of West Virginia says that she is informed that no Commissioners were in fact appointed by Virginia in response to the resolutions of Maryland, of 1795, 1801 and 1810, and that Virginia was not willing even to enter into a discussion of her right to the territory between the two branches of the Potomac river, and
78 that in fact nothing was done by Virginia until after Maryland passed the act of 1818.

The state of West Virginia says that she has not had access to the said resolutions of Maryland of 1795, 1801 and 1810, but she believes and charges that they contained no assertion of any claim to go to the south branch of the Potomac as a boundary line of said state.

Maryland Act of 1818.

In 1818 the General Assembly of Maryland passed an act, (chapter 206 acts of 1818), proposing to Virginia the appointment of Commissioners to settle the western boundary of said state, and agreeing to adopt *"the most western source of the North Branch of the Potomac"* as the point from which the western boundary should start.

Virginia Act of 1822.

On the 28th of February, 1822, the Legislature of Virginia passed an act, (chapter 14, acts 1822), which provides that "the Governor, etc., is hereby authorized to appoint three Commissioners on the part of the state to meet such Commissioners as may be appointed for the same purpose by the Commonwealth of Maryland to settle and adjust by mutual compact between the two governments the western limits of this state and the dividing line between this state and the Commonwealth of Maryland; to commence at the Fairfax Stone on the head waters of the North Branch of the Potomac river and to run a due north course to intersect the line between this state and the state of Pennsylvania." Said Commissioners were required to report their proceedings to the General Assembly for confirmation or rejection, etc.

Work of the Commissioners.

Under these resolutions, commissioners were appointed both by Maryland and Virginia and they went to the Fairfax stone in 1824. The Maryland commissioners refused to begin at the Fairfax stone, because they claimed that it was not at "the most western source of the North Branch of the Potomac River." They claimed that the most western source was a point about one mile west of the Fairfax stone, and that the difference between the two places of beginning embraced a section of country about one mile in width and thirtysix miles in length. The Virginia act required her commis-
79 sioners to begin at the Fairfax stone. This difference between the two commissioners put an end to any further negotiation and consequently nothing was done.

Report of Maryland Committee—1832.

In 1825, the Maryland Legislature passed another resolution providing for the appointment of commissioners, and that the Governor of Delaware should act as umpire in case of disagreement. And in 1832, a committee of the legislature of that state made an elaborate report to the legislature on the question of the boundary line of the state, in which what purports to be a history of the matter is given, and the various acts and resolutions of the legislature of the two states above mentioned are referred to. In speaking of the passage of the resolution of 1818 above mentioned by the legislature of Maryland, the committee says: "This state had now become wearied with her efforts to reclaim the territory south of the North Branch and hence this act of 1818, chap. 206, in proposing to Virginia the appointment of commissioners, agrees to adopt the most western source of the North Branch at the point from which the western boundary shall start." And the report closes with a recommendation of certain resolutions providing for appointment of commissioners, and that the Governor of Delaware should act as umpire.

This report and the accompanying resolutions were transmitted to the Governor of Virginia in June, 1832, and are found in the Journal and Documents of the House of Delegates of Virginia of 1832-33.

Appointment of C. J. Faulkner.

On the 20th of March, 1832, the Legislature of Virginia passed an act (acts 1832 page 308) directing the Governor to procure an authenticated copy of the record of a decision made some time anterior to the Revolution before George II. in a case brought before his Majesty in Council by the late proprietor of the Northern Neck of Virginia and the late proprietor of the western domain of Maryland in a controversy and dispute touching the limits and boundaries of the several letters patent granted by Charles II. and James II. for lands lying on both sides of the River Quiriough or Potomac etc.

Under this act the Governor of Virginia appointed the late Charles J. Faulkner, and he collected a large amount of valuable historical information and a large number of important documents
80 relating to the western boundary matter, and in November, 1832, made an able and exhaustive report to the Governor on the subject and returned with his report the evidence and documents collected by him. This report was published in full and may be found in full in Kercheval's History of the Valley of Virginia, chapter 13, and in Lewis' History of West Virginia, chapter 17. But the documents returned by him were not published, and have been lost.

Act of Virginia of 1833.

In 1833 the legislature of Virginia passed an act (acts 1833 page 24) similar to the above recited act of 1822 except that it provided for the boundary line "to commence at the Fairfax Stone or at the

first fountain of the Cohungoruton or North Branch of the Potomac river and to run a due north course," etc., and also that if Maryland failed to appoint commissioners then the Virginia commissioners should run and mark the line, etc.

Maryland Resolution of 1834.

The State of Maryland seems to have regarded the last act of Virginia as a refusal to accept her overtures for a settlement of the boundary question and on the 14th of March, 1834, the legislature of Maryland adopted a resolution (acts 1833-34, resolution No. 80) reciting "that it is necessary for the peace and security of our people and the dignity of the state that our southern and western boundaries should be finally settled and defined:

That this state has seen with deep regret the refusal on the part of Virginia to leave the settlement of these boundaries to friendly arbitration as proposed by this state": and then resolved "That the Attorney-General of this state be and he is hereby requested to cause suit to be instituted in the name of the State of Maryland against the Commonwealth of Virginia in such manner and form as may be technically required in the Supreme Court of the United States for the purpose of procuring a final legal adjustment and settlement of the southern and western boundaries.

It further provided for the employment of counsel and then resolved that "all adversary proceedings on the part of the State against the State of Virginia shall cease at any time before suit brought or judgment rendered when that state shall accept the overture of Maryland made by her resolution at December session 1831.

81 *Suit Brought.*

In pursuance of this resolution the Attorney-General of Maryland brought a suit in this honorable court on the 20th day of October, 1834, in the name of the State of Maryland against the Commonwealth of Virginia for the settlement of the western boundary of said state.

Suit Dismissed.

On the 21st of March, 1835 the Legislature of Maryland passed a resolution (Acts of 1835 Resolution No. 99), reciting certain portions of a message of Governor Tazewell of Virginia, in which he states that the act of Virginia passed March 5, 1833, was intended as an acceptance of the proposition of Maryland in the amicable settlement of the question between the states, and that the determination of Maryland to seek a decision of her rights by the judicial authority of the union was probably occasioned by a misapprehension of the terms of that enactment of Virginia, which was susceptible of satisfactory explanation, etc. And then repeals the resolutions of 1833 by which the said suit was directed to be brought and directs the attorney-General to discontinue all proceedings

under the same. And also authorized the Governor of Maryland to transmit a copy of said resolution to the Governor of Virginia and communicate to the government of Virginia the earnest desire of the State of Maryland to settle and finally adjust the long pending question by amicable negotiations.

Acting presumably under this resolutions, the Attorney-General of Maryland, on the 25th day of January 1836, dismissed said suit.

Maryland Act of 1852.

After this the matter appears to have rested without any definite action being taken until the 27th day of March, 1852, when the Legislature of Maryland passed an act (Acts 1852 chapter 275) as follows:

"Whereas, it is of great importance that the western territorial limit of the state of Maryland be clearly defined and her boundary be permanently established; and whereas, the true location of the western line of Maryland between the states of Maryland and Virginia beginning at or near the Fairfax Stone on the North Branch of the Potomac river, at or *or* near its source, and running in a due north line to the state of Pennsylvania, is now lost and unknown and all the marks have been destroyed by time or otherwise;
82 and whereas, the states of Virginia and Maryland have both granted patents to the same tracts of land at or near the supposed line, and as suits of ejectment are now pending in the circuit court of Alleghany county, in the state of Maryland, by persons holding under Maryland patents against persons now in possession and holding land under patents granted by the state of Virginia, which cannot be justly settled without establishing said boundary line;

"Therefore, section 1. Be it enacted by the General Assembly of Maryland, that the Governor be and he is requested to open a correspondence with the Governor of Virginia in relation to tracing, establishing and marking the said line, and in case the Legislature of Virginia shall pass an act providing for the appointment of a Commissioner to act in conjunction with a Commissioner on the part of Maryland in the premises, then and in such case, the Governor be and he is hereby authorized and requested to appoint a Commissioner who, together with the Commissioner who shall be appointed on the part of Virginia, shall cause the said line to be accurately surveyed, traced and marked with suitable monuments beginning therefor at the said Fairfax Stone and running thence due north to the line of the State of Pennsylvania.

SEC. 2. And be it enacted, that it shall be the joint duty of the Commissioners after running, locating, establishing and marking the said line, to make a report setting forth all the facts touching, locating and marking said line; and it shall be the duty of the Commissioner of each respective state to forward copies of the joint report to each of their respective legislatures; and upon the ratification of said report by the state of Virginia and the state of Maryland, through their respective legislatures, the said boundary lines shall

be fixed and established so to remain forever, unless changed by mutual consent of the two states."

At the same session a similar act was passed by the Maryland legislature in relation to the southern boundary of that State.

Virginia Act of 1854.

On the third of March, 1854, the General Assembly of Virginia, passed the following act, (acts 1854, ch. 1):

"Whereas, the General Assembly of Maryland has passed an act for running and marking the boundary line between that state and the state of Virginia, beginning therefor at the Fairfax Stone on the Potomac River some times called the North Branch of the Potomac River at or near the source and running thence due north to the line of the state of Pennsylvania: and whereas the legislature of Maryland has requested the appointment of a Commissioner on the part of this state to act in conjunction with the Commissioner of Maryland to run and mark said line: therefore be it enacted,

1. That the Governor appoint a Commissioner who together with the Maryland Commissioner shall cause the said line to be accurately surveyed, traced and marked with suitable monuments, be-
83 ginning therefor at the Fairfax Stone, situated as aforesaid, and running thence due north to the line of the state of Pennsylvania."

Said act then directs the Commissioners after running, locating, establishing and marking the said line, to make a report setting forth all the facts touching the same to their respective legislatures, and then provides that:

"Upon the ratification of such report by the legislatures of the states of Virginia and Maryland the said boundary line shall be fixed and established to remain forever unless changed by mutual consent of the said states."

Appointment of Commissioners Lee and M'Donald.

Under these acts the Governor of Maryland appointed Thomas J. Lee, Commissioner on the part of Maryland, and the Governor of Virginia appointed Angus McDonald, Commissioner on the part of Virginia.

These Commissioners, Lee and McDonald, met at Washington City, August 18, 1858, and applied to the Secretary of War for the services of an officer of the United States Engineers to aid them in the discharge of their duties. The Secretary promptly detailed Lieutenant N. Michler of the U. S. Topographical Engineers for that purpose.

The Commissioners with Lieutenant Michler met at New Creek in Virginia, now Keyser, West Virginia, and proceeded thence to the Fairfax Stone which was reached and easily recognized on the 19th of September, 1858.

Michler's Line Run.

Lieut. Michler was first assigned to work on the southern boundary line and it was not until June, 1859, that he began surveying the line from the Fairfax Stone to the Pennsylvania line. The work was prosecuted during the remainder of that year and on the 20th of December, 1859, Lieut. Michler made a report of the work done to said commissioners; and thereupon the commissioners made a joint report to the legislatures of their respective states, transmitting therewith said report of Lieut. Michler with the maps made by him and the correspondence between said Commissioners. This report and documents, together with a message of Governor Wise of Virginia, prepared before the expiration of his term of office, was transmitted to the Legislature of Virginia by Governor Letcher on
84 the 9th of January, 1860, and the whole is filed herewith as part of this answer as the same was afterwards published in pamphlet form marked "Defendant's Exhibit J," and the following named parts of the same is desired to be taken as part of this answer, viz: the messages of Governors Letcher and Wise, pages 3 to 7 inclusive, joint report pages 8 and 9, the instruction to Lieut. Michler on page 13; Lieut. Michlers report pages 15 and down to * on page 16, then from * on page 25, to the conclusion of the report page 31. It appears from said message of Governor Wise that Commissioner McDonald made a special separate report in addition to the joint report required by both Commissioners, but the State of West Virginia says that she has not been able to find said report or any copy of it.

The State of West Virginia also files herewith as part of this answer marked "Defendant's Exhibit K," a duly certified copy of a book prepared by said Commissioner Lee, which is now in the Land Office of Maryland, containing the correspondence between him and Mr. McDonald and certain letters of his to the Governor of Maryland, concerning the boundary question.

The Commissioners Disagree.

It will appear from the above mentioned message of Governor Wise and from the said correspondence between the Commissioners, that they differed as to the powers and duties imposed on them by the acts of the Legislatures under which they were appointed. Mr. Lee contended that they "were simply directed to retrace and mark certain boundary lines named in the acts" under which they were appointed, and that the Virginia act of March 26, 1858, establishing the commission, acknowledged and adopted the meridian line from the Fairfax Stone to the southern line of Pennsylvania as the boundary between the two states.

Mr. McDonald contended that the Commissioners were authorized to ascertain the true boundaries and were not bound by the lines specified in the act. And he claimed that the charter of Maryland required the meridian line to be run in order to obtain a starting

point in the 40′ of latitude and that the boundary line was not to follow from said starting point the said meridian line, but to diverge south-eastward until it struck the Potomac river proper—that is at some point where it had become a river—which point he claimed would be about the town of Piedmont.

85 *M'Donald Sent to England.*

Owing to this difference in view the Legislature of Virginia took no action on the report of said Commissioners, but did adopt a resolution under which Mr. McDonald was commissioned to go to England to procure documentary and other evidence to establish the true boundary between Virginia and the state of Maryland. Mr. McDonald sailed for England in June 1860 and after that never acted any further in conjunction with Mr. Lee in locating, tracing and marking either the western or the southern boundary line of Maryland. Mr. McDonald procured a large amount of documentary evidence on these boundary questions and subsequently made a report and returned this evidence to the Governor of Virginia, but nearly if not all of it has been lost or was destroyed during the late war and cannot now be obtained.

Maryland Adopts the Michler Line.

But on the fifth of March, 1860, the legislature of Maryland passed "An act for the establishment of the southeastern and northwestern boundary line between this state and Virginia, and making further appropriation to complete the survey and making of the same." (See acts 1860, ch. 385). Said act is as follows, so far as it relates to the western boundary:

SECTION 2. And be it further enacted, "That the northwestern line of this state, is a line commencing at the Fairfax stone, at the head of the North Branch of the Potomac river, and running thence due north to the southern line of Pennsylvania, as surveyed in the year 1859, by the commissioners appointed by the states of Maryland and Virginia in conformity with the laws passed by the said states for that purpose."

SECTION 3, appropriated $10,000 "for the payment of the states' proportion of such expenses as may be required to complete the survey and record of said line," etc.

Michler Line Marked by Maryland.

Mr. Lee, as commissioner of the state of Maryland in the summer of 1860, employed two surveying parties "to continue the tracing of the line between the points determined astronomically by Lieut. Michler," etc., and "to mark the line at every prominent point and on an average about every half mile, etc. And in August of that year he reported to the Governor of Maryland that the work was about completed. See the correspondence of commissioner Lee, a copy

of which is filed herewith as above stated, as "Exhibit K."
86 And the State of West Virginia also files herewith as part of their answer a copy of the map made by Lieut. Michler marked "Defendant's Exhibit O." And in the message of Governor Hicks, of Maryland, to the legislature at the January session, 1862, he says:

"Report of the Commissioner on the part of Maryland to ascertain and define the southeastern and the northwestern boundaries between Maryland and Virginia are herewith submitted. I am informed by the commissioner that the tracing and marking of the western line of the state from the Fairfax stone to the northern boundary of Maryland, was completed during the summer of 1860. The work was commenced in 1859, with the co-operation of Virginia in conformity with chapter 275 of the acts of 1852. The commissioner of Virginia failed to join in the completion of the survey, but it being a matter of great importance to Allegheny county that it should be no longer delayed, the commissioner for Maryland completed the work as required by chapter 385 of the acts of 1860."

See Senate Journal and documents of Maryland, 1861-2.

Mr. Lee in his letter to Mr. McDonald of May 8, 1860 says:

"In the act of 1852 in relation to retracing and making the *western* line, Maryland yielded, as she has unfortunately too often done, the point at issue between the commissioners of 1818, etc."

Difference Between Michler's and Deakins Lines.

The report of Lieutenant Michler shows that the meridian line run by him strikes the Pennsylvania line about three-quarters of a a mile west of the old line run by Francis Deakins, which he says is that "generally adopted by the inhabitants as the boundary line," and he further says that if his line "is adopted it will cause great litigation, as the patents of the lands call for the boundary as their limits."

Maryland Claims to Michler Line.

It will thus be seen that between the Michler line of 1859 and the Deakin's line of 1788, there is a triangular shaped strip of land having its apex at the Fairfax stone and its base three-quarters of a mile in length on the Pennsylvania line and an altitude of thirty-seven miles. The state of Virginia has granted patents for the lands on the west of the old Deakin's line and those claiming under these Virginia patents have held up to said Deakin's line. After the Michler line was run and marked the citizens of Maryland began to claim the right in some instances to extend their holdings
87 up to the Michler line, and in others to take up the land between said Deakin's and Michler line. This has led to many disputes, and to some serious conflicts and litigation, as Lieut. Michler predicted it would. Ever since said Michler line was run and marked as aforesaid, the state and people of Maryland have claimed

and insisted that it was the true boundary line between the states. And never since the passage of the said act of 1852, by the Maryland Legislature, has there been any claim put forward by or on behalf of said state that the meridian of the South Branch was the boundary line, or that any other line was the true boundary except the Michler line, until the bill was filed in this suit by the Attorney-General of Maryland.

Maryland Abandoned Claim to South Branch.

The state of Maryland, first by the act of 1818 and afterwards and much more clearly and conclusively by the acts of 1852 and 1860, abandoned all claim or pretence of claim to the territory south of the North Branch of the Potomac, and since the act of 1852, she has not only acquiesced in the claim of Virginia and West Virginia to and their jurisdiction over the territory south of the North Branch, but she has insisted that the said meridian line run by Lieut. Michler from the Fairfax stone to the Pennsylvania line, is her true western boundary. Never since the formation of West Virginia has the state of Maryland asserted or set up any claim against her to the said territory south of the North Branch, until this suit was brought, nor had she asserted any such claim against Virginia from 1852 up to the date of the creation of the state of West Virginia. The only disputed boundary question between Maryland and West Virginia since this state was formed, has been as to whether the Michler line or the old Deakin's line was the true boundary between the two states.

Maryland's Recognition of the North Branch as the Boundary.

The following recited facts will show that the State of Maryland has almost continuously recognized the North Branch of the Potomac as the boundary line between her and Virginia and West Virginia, and has acquiesced in the exercise of jurisdiction by said states over the territory lying south of said North Branch.

88 *By Constitution of* 1851.

First, by the constitution of Maryland of 1851, article 8, section 2. Said section is as follows:

"When that part of Alleghany county lying south and west of a line beginning at the summit of Big Back Bone or Savage Mountain where that mountain is crossed by Mason and Dixon's line, and running thence by a straight line to the middle of Savage River where it empties into the Potomac river, thence by a straight line to the nearest point or boundary of the State of Virginia, thence with said boundary to the Fairfax Stone, shall contain a population of ten thousand, and the majority of the electors thereof shall desire to separate and form a new county and make known their desire by petition to this legislature, the legislature shall direct, at the next suc-

ceeding election, that the judges shall open a book at each election district in said part of Alleghany county and have recorded therein the vote of each elector 'for or against' a new county. In case the majority are in favor then said part of Alleghany county to be declared an independent county, and the inhabitants whereof shall have and enjoy all such rights and privileges as are held and enjoyed by the inhabitants of the other counties in this state, etc."

See Charters and Constitutions, part 1, page 857.

This constitution was formed by a convention which met at Annapolis, November 4, 1850, and completed its labors May 13, 1851. It was ratified by the people June 4, 1851.

Here is a distinct recognition by the organic law of the State of Maryland, that the Savage river empties into the Potomac river and that the boundary of the State of Virginia runs to the Fairfax Stone, and this in 1851. The Savage river empties into the North Branch above the town of Piedmont. The line here set out was to run "to *the middle* of Savage river, where it empties into the Potomac river, thence by a straight line to the nearest point or boundary of the State of Virginia." This language is used no doubt on account of the dispute between the two states as to whether said boundary was the north or south bank of the Potomac. But the intention of the makers of this constitution was that the line should go to whichever bank of the river was the true boundary and then follow it to the Fairfax Stone, which has been shown is at the head of the North Branch.

By Act of 1852.

The next year after the constitution was adopted the legislature of Maryland passed the act of 1852 ch. — for the appointment
89 of commissioners to run the western boundary and directed them to commence at the Fairfax stone, as shown hereinbefore.

By Act of 1872 *Creating Garrett County.*

The new county provided for by this section of the constitution of 1851 was not formed until after the war, in point of fact not until 1872. By an act approved April 1, 1872, by the legislature of that state, it is provided as follows:

"That all that part of Alleghany county lying south and west of a line beginning at the summit of Big Back Bone or Savage mountain, where that mountain is crossed by Mason and Dixon's line and running thence by a straight line to the middle of Savage river where it empties into the Potomac river; thence by a straight line to the nearest point or boundary of the State of West Virginia, then with the said boundary to the Fairfax stone shall be a new county to be called the county of Garrett, provided, etc., etc."

This language it will be observed is identical with that of the 2nd section of art. 8 of the constitution of 1851 above quoted. Here then is a distinct recognition of the North Branch and the Fairfax

stone as the boundary of the State of West Virginia, twenty years after the adoption of the constitution of 1851 and the passage of the act of 1852.

By Charter of Piedmont and Cumberland R. R. Co.

The Piedmont and Cumberland Railway Company was incorporated in 1886 under the general incorporation laws of the State of Maryland, and by chapter 59 of the acts of the legislature of that state of 1888 the charter of said company was amended. Said act contains the following language:

"For the purpose of constructing and maintaining and operating a railroad in Maryland between a point in Alleganey county, Maryland, opposite to the junction of the West Virginia Central and Pittsburg Railway Company with the Baltimore and Ohio Railroad Company, above Piedmont in West Virginia to a point at or near Cumberland in said Alleghany county."

The junction of the West Virginia Central and Pittsburg Railway Company, with the Baltimore and Ohio is on the West Virginia side of the North Branch of the Potomac above the town of Piedmont.

90 *By Martenet's Map.*

By chapter 94 of the acts of the Legislature of Maryland of 1865, the sum of $3,000 was appropriated to assist Simon J. Martenet in completing and publishing his map of Maryland as proposed in his published description and provided that said map, when completed and published, should be examined by the Superintendent of Public Instruction, and upon his certificate that the same has been completed and published in the manner and style proposed and set forth in the published appeal of said Martenet, to the Legislature, it should be the duty of the State Librarian to receive of said Martenet 150 copies of his large map of Maryland on rollers and 150 copies of said map in atlas form, (ten copies of each whereof shall not be colored) and to hold the same subject to the provisions thereafter contained in said act. Said act then provides that the State Librarian shall retain the ten copies not colored, of each of the said map and atlas, and directs how he should dispose of the other copies so received, for the use of the state and the different counties of the state.

The said map was completed and published by said Martenet as provided by said act and was approved and accepted by the officer named in the act. And there are still in the office of the State Librarian of Maryland, at Annapolis a number of copies of said map, one of which has been procured by the State of West Virginia, through the courtesy of the Attorney General of Maryland and is filed herewith as part of this answer, marked "Defendant's Exhibit L."

The copy filed herewith is one of those that was not colored, but it clearly designates the territory south of the North Branch, as "West Virginia" and makes said Branch the boundary line between

said states and the meridian line from the Fairfax Stone to the Pennsylvania line as the western boundary of Maryland.

On those copies of said map which were colored the said boundaries were distinctly shown by the different coloring, as well as by the lines themselves.

All Maps Show North Branch as Boundary.

And the State of West Virginia further says that every map of Maryland or of Virginia or of the United States of America that has been published since the survey of the Fairfax Grant, and its confirmation by the King in 1745 has represented the North Branch of the Potomac as the boundary line between Virginia or West
91 Virginia and Maryland, and has shown all the territory lying south of said Branch as being in Virginia or in West Virginia since the formation of this state.

By Her County Authorities.

The county authorities of Alleghany county, and Garrett county, in Maryland have entered into contracts with the county authorities of Mineral county, in West Virginia, and have built several bridges at different points across the North Branch of the Potomac river by each contributing a portion of the expenses thereof, and have thus recognized the said river as the dividing line between said counties.

By Her Commissioners in Controversy with Virginia.

From the year 1870 to 1877, the states of Maryland and Virginia were engaged in an effort to settle the southern boundary between those states. Commissioners were appointed in 1870 on the part of each state to endeavor to settle and adjust said boundary by amicable agreement, but after carrying on negotiations until in the year 1873, the commissioners were unable to agree on any settlement that was mutually acceptable, and they made their final reports to governors of their respective states. A copy of the final report of the Virginia commissioners is filed herewith, marked "Defendant's Exhibit M," as published by the state of Virginia, entitled "Final Report of the Virginia Commissioners on the Maryland and Virginia Boundary, to the Governor of Virginia." Also a copy of the report of the Maryland commissioners as the same appears in the house documents of Maryland of 1874. These reports each contain elaborate statements of the case on the part of Maryland and Virginia respectively in which many matters pertinent to the issues involved in this suit are discussed and the state of West Virginia respectfully refers the court to these statements as sustaining her claims in this answer, that the state of Maryland regarded the controversy as to the western boundary, so far as her claim to go to the South Branch of the Potomac as finally settled by her acts of 1852 and 1860.

By Her Governors.

The state of West Virginia further answering, says that the governors of the state of Maryland have recognized the jurisdiction of the state of West Virginia over the territory south of the
92 North Branch of the Potomac, now claimed by Maryland as the said line, by honoring and accepting requisitions issued by the governors of West Virginia on the governors of Maryland for the apprehension of persons charged with crimes committed within said territory. August 19, 1875, Governor Jacob, of West Virginia, issued a requisition on the Governor of Maryland for the apprehension of Augustus Summers, charged with grand larceny, committed in Mineral county, West Virginia.

A similar requisition was issued in September 3, 1877 for William Bartholomew, charged with horse stealing in said Mineral county.

Also on July 2, 1880 for M. F. Inskeep charged with forgery committed in said Mineral county.

And on December 23, 1881, for William Harris charged with attempt to murder committed in said Mineral county.

These requisitions were honored and accepted by the governors of Maryland, and in at least two of the cases above named the fugitives were arrested in Maryland under the warrants of her governor issued on said requisition and returned to the authorities of said Mineral county and were there tried for the offenses with which they were charged.

And on the other hand in October, 1872, the governor of Maryland issued a requisition on the governor of West Virginia for William Craig charged with rape committed in Alleghany county, Maryland, alleging that said Craig had taken refuge in Mineral county, West Virginia. And a warrant was on said requisition issued by the governor of West Virginia to the sheriff of Mineral county to arrest said fugitive and deliver him over to the State of Maryland.

And the State of West Virginia alleges that in various other ways and at various other times than those above mentioned, the State of Maryland has recognized the right of West Virginia to the territory south of the North Branch of the Potomac and west of the Fairfax Stone, and acquiesced in the exercise of exclusive jurisdiction and control of West Virginia over said territory.

And so she says that the State of Maryland, by her constitution of 1851, by the various acts of her Legislature above mentioned, by the said acts of the governor in delivering up fugitives from justice and by her county authorities and in various other ways, has recognized the right of West Virginia to said territory.

93 *Adverse Possession, Laches and Acquiescence Pleaded.*

And, therefore, the State of West Virginia insists and claims the continuous uninterrupted, open and adverse possession of and exercise of exclusive jurisdiction and control over all said territory south

of said North Branch and west of the meridian line drawn from the Fairfax stone to the Pennsylvania line by her and the colony and State of Virginia for more than one hundred and fifty years, and the laches and acquiescence of the State of Maryland therein, as a full and complete answer, and defense to the claims, and pretences of the State of Maryland set forth in her bill of complaint filed in this suit.

And the State of West Virginia asks that the court will give and accord to her the benefit of all the legal and equitable presumptions arising from the said long continued possession and exercise of jurisdiction and control over said territory and of the said laches and acquiescence of the State of Maryland.

Maryland Act of 1890.

The State of West Virginia further answering says that the act of the General Assembly of Maryland, under and by virtue of which this suit was instituted by the Attorney General of said State, being chapter 563 of the acts of 1890, and published along with the bill filed in this suit, did not authorize or direct the Attorney General to make such a claim as that contained in the said bill, and did not contemplate the assertion of the old claim of Maryland to go to the South Branch of the Potomac as her boundary line which had long since been abandoned by her. It simply provides:

"That the Attorney General of the State be and he is hereby authorized and directed to take as speedily as possible, such steps as may be necessary to obtain a decision of the Supreme Court of the United States which will settle the controversy between the States of Maryland and West Virginia, over and concerning and which will finally fix and determine the true location of that portion of the boundary line between said States lying between Garrett county, in the State of Maryland, and Preston county, in the State of West Virginia."

This Suit Brought Without Authority.

And so the State of West Virginia says that the Attorney General of the State of Maryland had no authority to bring this suit in the manner in which it was brought, and that the said Bill of
94 Complaint was filed without proper authority from the plaintiff, the State of Maryland.

Act of 1890 *Recognizes the North Branch as Boundary.*

And the State of West Virginia says that this last named act of the Legislature of Maryland is of itself a recognition of the North Branch as the boundary line between the States and of the Fairfax Stone as a point in said boundary. The provision of the Constitution of the State of Maryland of 1851, authorizing the creation of the county of Garrett, and the act of 1872 by which it was created,

both recognize the North Branch as the boundary line and the Fairfax Stone as a point in said boundary as has been hereinbefore shown, and this act confines the object of this suit authorized to be brought to the settlement of that portion of the boundary line lying between said Garrett county in Maryland and Preston county in West Virginia. This is the line running from the Fairfax Stone to the Pennsylvania line. This is the only line between the counties named in said act. And the real matter of controversy between the two States, as to this line, was and still is, whether the old Deakins line of 1788 or the Michler line of 1859 is the true boundary line of the States between said counties. And the intention of the Legislature of Maryland in directing suit to be brought was to obtain a settlement of this disputed boundary line, and not to open again the controversy about the South Branch of the Potomac.

Deakins Line the True Boundary.

Now as to this line running from the Fairfax Stone to the Pennsylvania line, the State of West Virginia respectfully insists and claims that the old line run by Francis Deakins in 1788 is and should be established as the true boundary line between the two States, and that she is entitled to all the territory lying west of said line. This line was run under the authority of the State of Maryland as a due north line. It was run by a competent and experienced surveyor selected by said State, and doubtless the instruments used were the best attainable then. The courses and distances of the military lots laid off by Deakins along the said line all call for this line as a due north line, as appears by the copies of said courses and distances filed herewith as above stated. The grantees of these lots took possession of said lots as they were laid out and held under them only up to said Deakins line.

The State of Maryland prior to the running of said Deakins
95 line, had made some few grants for lands which extended westward of said line as run by Deakins. But after said Deakins line was run and established the State of Maryland never made any more grants of lands lying west of said line.

Virginia Grants up to Deakins Line.

On the other hand the State of Virginia had prior to the running of said Deakins line made a number of grants for lands lying along the meridian line drawn from the Fairfax stone to the Pennsylvania line which grants called for natural objects in "the Maryland line;" and after said Deakins line was run the said State of Virginia continued to issue patents for the vacant lands lying just west of and adjoining said Deakins line, calling for natural objects in said line, until the whole of the territory lying west of and adjacent to said line was taken up and patented by the State of Virginia. And the patentees of said lands claiming under said Virginia patents and those claiming them, have claimed and held possession of the lands granted

to them respectively up to said Deakins line as the true boundary line between Maryland and Virginia and West Virginia. And in this way the said Deakins line came to be adopted and recognized by the inhabitants and land owners along the same as the state boundary line and as the limits of their lands. No controversies arose between the holders of the Maryland military lots as laid out by Francis Deakins and the said Virginia patentees, except in some instances as to the true location of the Deakins line. The only other controversies that remained after said Deakins line was run were such as arose between persons holding under some old patents issued by Maryland prior to the running of the Deakins line for lands lying west of said line, and persons claiming under patents issued by Virginia for the same lands. But these were few in number and limited in the amount of land involved.

List of Virginia Patents.

The land records of Preston county, West Virginia, were destroyed by fire some years ago, and in the limited time allowed for the filing of this answer, the State of West Virginia has been unable to procure copies of all the patents issued by the State of Virginia for lands lying along the said boundary line; but she files herewith sixteen of said patents, as part of this answer marked "Defendant's Exhibit N," Nos. 1 to 16, respectively, together with a list of the same giving the names of the patentees, the quantity of land granted by each
96 patent and the dates of the surveys and of the patents, endorsed, "List of Patents along the Boundary line," marked "Defendant's Exhibit N." And if it becomes necessary and proper, she will procure and file copies of other patents and surveys made under the authority of Virginia for lands lying along said line.

Possession Under Virginia Patents.

The said Virginia patentees took possession of and held the lands granted to them respectively by said state, claiming and holding up to said Deakin's line from the date of their respective patents up to the present time. They acknowledged allegiance to the governments of Virginia and West Virginia, paid taxes on said lands to said states and voted for officers of the said state governments. A large quantity of the lands lying immediately west of said Deakin's line, have been improved and settled upon by the grantees of Virginia, in some instances for nearly if not more than one hundred years, and in other instances for a less period of time, but long beyond the period of limitation, or prescription recognized and enforced by the laws of the states of Maryland and of Virginia or of West Virginia. And the state of West Virginia respectfully submits that it would be most inequitable and unjust to now deprive them of the property which has been so long held by them as aforesaid, upon the mere claim that in running said boundary line, Frances Deakins, the agent of the state of Maryland, made a slight error in the variation of the magnetic needle, or that the surveying instrument of said Deakins' was not as

strictly accurate as the progress of modern science enables us to make such instruments now.

Marks on Deakins' Line Obliterated.

In the course of time the marks on Deakins' line became obliterated and destroyed and the true location of the line was lost and unknown in many places. And the act of the Maryland General Assembly passed May 27, 1852, hereinbefore mentioned, recited this state of facts and provided for the retracing and marking of said line. The preamble to said act contains the following language:

"Whereas, the true location of the western line of Maryland, between the states of Maryland and Virginia, beginning at or near the Fairfax stone on the North branch of the Potomac river at or near its source, and running a due north line to the State of Pennsylvania, is *now lost* and *unknown*, and *all the marks* have *been destroyed* by time or otherwise.

97 The act then provides for the appointment of Commissioners, "who shall cause said line to be accurately surveyed, *traced* and marked with suitable monuments, beginning therefor at the Fairfax stone, etc."

The language of the Virginia act, of March 3, 1854, also above recited, is exactly like that of the said Maryland act in providing that the Commissioners "shall cause said line to be accurately surveyed, traced and marked with suitable monuments, etc."

Old Line Was to be Retraced.

The State of West Virginia submits that these acts did not contemplate that a new line should be run different from that which had been formerly run and adopted, but that the former line, which said act recited was then *lost* and *unknown* should be found, *retraced*, and marked with suitable monuments. If said old line could be found it was simply to be "traced" and marked. It was believed to be a due north line, and it was known that it had been originally run as such, hence the Commissioners were directed to run "due north" to the line of the State of Pennsylvania," this being merely descriptive of the old line. It was evidently not intended that the line should be changed, in case it was found to vary slightly from a due north course by reason of a small variation in the compass or slight inaccuracy of instrument.

Deakins Line the True Boundary Line.

Lieut. Michler found the terminus of the old line on the Pennsylvania line about three quarters of a mile east of the point where the line run by him struck said Pennsylvania line.

The duty of the commissioners under said acts clearly was to have had said old line retraced, from the Fairfax Stone to the point where Michler found its terminus on the Pennsylvania line. If this

had been done the "great litigation" which Michler predicted would follow the adoption of the meridian line run by him, would have been avoided, and the intention of the legislatures of both Maryland and Virginia would have been carried out and exact justice done in the premises.

And the State of West Virginia insists that the rights which had been acquired by Virginia and by this state, and by patentees of Virginia, to the land lying along the west side of said Deakins line, by their long-continued possession and exercise of ownership over the same, and by the exercise of jurisdiction over the said ter-
98 ritory by the state of Virginia, could not be and were not divested or interfered with by the running and marking of said Michler line in 1859. And she says that none of said rights have been relinquished or abandoned, or become divested by anything that has been done since said Michler line was run. And she avers that said old Deakins line is the true boundary line between said states and prays that it may be so declared and established by this Honorable Court in this case.

The State of West Vrginia does not admit that the said old Deakins line was not correctly run, nor that it does not follow a due north course. Nor does she admit that the said Michler line does follow a due north course. But she says that the said Deakins line was run as a due north line and had been so regarded and recognized both by the state of Maryland and of Virginia and by the citizens of said states for more than half a century before said Michler line was run, and the state of West Virginia pleads and claims that the long-continued exercise of jurisdiction by the state of Virginia up to said line and the possession for said long period of her grantees of said territory, have vested in this state as the successor of Virginia, and in said patentees of Virginia and those claiming under them, full and complete title to said lands west of said Deakins line, and constitute a complete and valid defense to any claim of the state of Maryland to the same.

Virginia Patents to Deakins.

Among others who received patents from the State of Virginia for lands lying west of and adjacent to said Deakins line, shortly after said Deakins line was run, was the same Francis Deakins who ran and established said line under the authority of the State of Maryland, as appears by several patents to him and to his brother William Deakins filed herewith and mentioned on the list filed herewith as above stated.

Michler's Map Filed.

A copy of the map made by Lieutenant Michler of the line run by him in 1859 is also filed herewith as part of this answer marked "Defendant's Exhibit O.," on which the terminus of the old Deakins line on the Pennsylvania line is shown.

North Bank of the Potomac the Boundary Line.

The State of West Virginia further answering says that the
99 true northern boundary line between her and the State of Maryland is the left or northern shore of the Potomac river at low water mark, for the whole extent of that shore coterminous between Maryland and West Virginia, that is to say, beginning on the division line between the states of Virginia and West Virginia at or near Harpers Ferry, at low water mark on the left or northern shore of the Potomac river, and following said shore to the Fairfax Stone at the head spring of said river, and she prays that the court will establish said line as her northern boundary with the State of Maryland, that her full jurisdiction and authority of the whole of said river to low water mark on the said northern shore may be fully confirmed and quieted by a decree of this honorable court in this case.

The State of Maryland claims that the said Potomac river to the right or southern shore at low water mark is within her territory and jurisdiction, and disputes the said claim of the State of West Virginia. The compact made between Virginia and Maryland at Mount Vernon in 1785 hereinbefore mentioned, simply provided for the exercise of certain privileges and rights of navigation and fishing in said river and for service of process upon the same and the punishment of crimes committed thereon, etc., but did not settle the question as to which state said river belongs nor as to where the true boundary line between said states along said river is located, and said question remains unsettled to this day.

The State of West Virginia bases her claim that said river is within her territory and should be subject to her exclusive jurisdic-
*dic*tion and control upon the following considerations:

Potomac Thought to Extend Above 40°.

First. It was manifestly the opinion and belief of the King when he granted the charter of Maryland to Lord Baltimore in 1632 that the first fountain or head spring of the Potomac river was north of the 40° of north latitude, and consequently that a meridian line drawn through said head spring would run west of said river, and that the 40° of latitude would have to cross said river to intersect said meridian line. Hence he provided in said charter that the line from the point of intersection of said parallel and meridian should tend southward to the farther bank of said river. In that case the farther bank of said river from said point of intersection would have been the northern bank. It was believed that said river continued in a northwesterly course. Neither the King nor any one else con-
nected with said matter had any idea that said river made a
100 bend to the southward as was discovered nearly a century later. It will be remembered that even as late as 1736 in the instruction given to the surveyors of the King who were to survey Lord Fairfax's grant, said surveyors were especially charged to take

observations and note where the Potomac river crossed the 40° north latitude. The charter will be construed in the light of the knowledge of the parties to it at the time it was granted as this is the only way by which their intention can be carried out.

Potomac River Granted to Lord Hopton and Others.

That King Charles II. understood that the Potomac river was not granted to Lord Baltimore by his father, Charles I., and that he believed said river belonged to his royal province of Virginia, is clearly shown by his grant of the Northern Neck of Virginia, first in 1649 and afterwards confirmed in 1663 to the Earl of St. Albans and others. By his said patent and the subsequent confirmation thereof he granted,

"All that entire tract, territory, or parcel of land, situate, lying and being in America, and bounded by and within the head of the rivers Tappahannock or Rappahannock and Quiriough or Pottowmack rivers, the courses of the said rivers as they are commonly called or known by the inhabitants and description of those parts and Chesapeake Bay together with the rivers themselves. And all the islands within the banks of those rivers. And all woods, etc."

Here is a distinct grant of the Potomac river and all the islands within its banks to the said Earl of St. Albans and others by the King, and in this grant these grantees and the inhabitants in the territory granted were to be and remain "in all things subject and obedient to such laws and constitution as are or shall be made by the said Governor, Council and Assembly" of Virginia.

These charters were always granted after reference to and recommendation by the Council or the Lords' Committee of Plantations. There had been a bitter controversy between Lord Baltimore and the authorities of Virginia in regard to his charter and to the limits of his territory, especially on the lower Potomac and across the Bay ever since said charter was granted, and this controversy had been before the King and Council in various ways, and it can not be doubted that the whole matter as to whether the Potomac river was within said charter limits was fully discussed, and therefore that King Charles II. in granting the Potomac river to the Earl of St. Albans and others acted upon full information and advisedly.

Upon this point the State of West Virginia refers to the
101 various papers and documents published in the "Report and Accompanying Documents of the Virginia Commissioners appointed to ascertain the boundary line between Maryland and Virginia, 1873," from page 73 to 162 inclusive, which is filed herewith as part of this answer, marked "Defendant's Exhibit A."

Treaty of Peace of 1763. *Map Filed.*

Again, by the treaty of peace between Great Britain and France at Paris, concluded on the 10th day of February, 1763, the boundaries of the various provinces of the respective sovereignties in America, were fixed and determined. Mr. De Jarnette, who was

sent to England by the state of Virginia in the year 1872 to procure documentary evidence to be used in the controversy with Maryland, regarding the southern boundary, procured a photograph copy of a section of the English maps made under that treaty, "by Eman Bowen, geographer to his Majesty, and John Gibson, engraver." This map contains a number of the articles of said treaty printed on its face.

And the State of West Virginia files herewith as part of this answer one of the copies of said map, marked "Defendant's Exhibit P," procured by Mr. De Jarnette, as aforesaid. Its title is:

"An accurate map of North America, describing and distinguishing the British and Spanish dominions on the great continent, according to the definitive treaty, concluded at Paris, 10th February, 1763. Also all of the West India Islands belonging to and possessed by the several European Princes and States. The whole laid down according to the latest and most authentic improvements."

On the face of this map there is the following inscription:

"The limits of his majesty's several provinces are here laid down, as they at present exercise their jurisdiction. But the limits of the Massachusetts province with New York, New York with New Jersey, Connecticut with New York, and Pennsylvania with Maryland, are not yet fully determined. Nor is the boundary of North Carolina and of South Carolina yet settled, or of South Carolina and Georgia."

But the boundary between Maryland and Virginia was settled, and an inspection of this map will show that the boundary line between these provinces is distinctly laid down on the left or northern bank of the Potomac river. This was done by the authority of Great Britain, exercising the treaty making power. It can not be claimed that Great Britain did not know the boundaries of her
102 colonies, and especially must she be held to have been acquainted with the boundaries of these two of her oldest colonies, between which there had been so much controversy and discussion as to their true boundaries before the King and Council and the Lords' committee of trade and foreign plantations. Besides, it was a matter of great importance that in this important treaty with France the boundaries of these provinces should be announced and determined. All the provinces varied from each other in many particulars of the regulations of commerce and trade and navigation. The vessels of France required information as to parts of what provinces they entered and what regulation they were to observe. It was especially important that it should be known which province had jurisdiction and control over so important a navigable river as the Potomac. And so it is here definitely determined and announced to the world that this great river, this commercial highway belonged to and was under the dominion, jurisdiction and control of the colony of Virginia. That the treaty making power of Great Britain had the power to make such a determination, even had it been unsettled before, can not be questioned.

But this was strictly in accordance with the understanding which the Crown of Great Britain and its foreign office from the first had

of this matter, and with the action of Charles II. in making the grant of the Northern Neck of Virginia, and it is also worthy of notice that this treaty was made not very many years after the survey and settlement of the boundaries of said Northern Neck as hereinbefore set forth.

Mitchell's Map.

The State of West Virginia also files herewith as part of this answer marked "Defendant's Exhibit Q," a photographic copy of "A map of the British and French Dominion in North America with the roads, distances, limits and extent of the settlements, humbly inscribed to the Right Honorable the Earl of Halifax and the other Right Honorable the Lords Commissioners for Trade and Plantations, by their Lordships most obliged and very humble servant, John Mitchell." This copy of this map was also procured by Mr. De Jarnette with other documents upon his said visit to England. On the face of this map there appears this inscription:

"This map was undertaken with the approbation and at the request of the Lords Commissioners for Trade and Plantations, and is chiefly composed from draughts, charts and actual surveys of
103 different parts of his magesty's colonies and plantations in America, a great part of which have lately been taken by their lordship's orders, and transmitted to this office by the Governor of said colonies and others.

JOHN POWNALL, *Secretary.*"

Plantation office, Jan. 13, 1735.

There is also the following note on the face of said map:

"The bounds of Pennsylvania and Maryland and the Delaware counties are here laid down according to the late decree in chancery, which is not supposed otherwise to affect the claims of any."

This map was first drawn in 1750 and again corrected and improved before it was published in 1755, as appears by the extended note endorsed on the face of said map, and the maker of it says:

"I have since taken care to procure and examine all the information I could get in order to render it as accurate and useful as possible, which has given occasion to the second edition of it, in which I have likewise inserted all the observations I believe we have for the geography of North America, since I find them grossly misrepresented by others."

"The foundation of this map is the several manuscripts maps, charts and surveys that have lately been made of our colonies, which represent most places from the ocean to the Mississippi, etc."

Here, then, is a map made at the request and with the approbation of the Lords Commissioners for Trade and Plantations, the department of the government that had the special charge of and jurisdiction over all matters relating to the colonies, and it was made up from official documents, maps, charts in said office, and was evidently constructed with great care and accuracy.

This map clearly shows the boundary line between Maryland and Virginia on the left or northern bank of the Potomac river.

But again, if the charter of Maryland is not to be interpreted by the obvious intent and understanding of the King at the time it was granted as shown above, but in the light of facts that have since been discovered and by the real topography of the country, then the State of West Virginia avers that a strict application of the language of said charter to the facts relating to the head spring of the Potomac River, requires that the line along said river shall be placed on the left or northern bank.

Lieut. Michler, in his report, on page 28 of the pamphlet filed herewith, marked "Exhibit J," says:

"Within 4,132 feet north of the Fairfax Stone the line"
104 (speaking of the meridian line run by him from the Fairfax Stone to the Pennsylvania line) "crosses the North Branch of the Potomac, the stream making a bend to the west and north from the springs, before assuming its general course towards the east. It has a narrow sheet of water there, twenty feet from bank to bank, running through laurel swamps."

The line therefore drawn from the Pennsylvania line south towards the Fairfax Stone to the "further bank of the said river" would cross the river before it reached said stone, and the "farther bank" would be that bank which becomes the northern bank after the river assumes its general course towards the east.

The rights of Lord Baltimore and of the Virginia Colony were very materially changed by the Revolution of 1649 in England. The colony of Virginia and especially some of the citizens who claimed rights on the eastern shore, among them William Claiborne, had vigerously contested Lord Baltimore's charter, and his rights under it from the time it was first granted, and in the midst of these controversies came the Revolution of 1649, in Great Britain. Charles I, was beheaded January 30, 1649. The Commonwealth in England, commenced from that period and continued, under different modifications until the restoration of Charles II, in 1660. Oliver Cromwell was declared Protector, January 9, 1654, and died on the 13th of September, 1658. He was succeeded by his son Richard Cromwell, but he abdicated in 1659. Sir William Berkley, the Governor of Virginia, and the council and burgess were loyal to Charles II. On the deposition of the monarchy in England, doubts existed in America whether the powers of the Governor and Council, and the other officers of the Colonial Government, deriving their appointment from them, were not extinct. This gave rise to one of the provisions of the first act of the Grand Assembly, held at James City on the 10th day of October, 1649, which made it highly penal to maintain such doubts, and declared all defenders of the execution of Charles I, accessories to the death of the King after the fact; and to doubt the right of succession of Charles II, was made high treason, and it was made equally treasonable to propose a change of government, or to doubt the powers of the governor and government of Virginia.

See Hennings Statutes at large Vol. 1, page 358, 359-60-61.

In 1651 the Parliament sent over Commissioners, "to reduce all the plantations, within the Bay of Chesapeake, to the due obedience to the Parliament and the Commonwealth of England." These Commissioners were the same William Claiborne, who had been in constant controversy with Lord Baltimore, together with
105 Richard Bennett and Edmund Curtis. The Virginia authorities surrendered to these Commissioners promptly. By the articles "at the surrender of the countrie," agreed on by these Commissioners on behalf of the Parliament and by the Governor and Council and burgesses for the whole Colony of Virginia, on the 12th of March, 1651, for the surrendering and settling of the plantation of Virginia, under the obedience and government of the Commonwealth of England, it was solemnly agreed and concluded:

"4. That Virginia shall have and enjoy the ancient bounds and limits granted by the charters of the former Kings, and that we shall seek a new charter from the Parliament for that purpose against any that have intrenched upon the rights thereof."

The Commissioners having reduced Virginia as aforesaid then proceeded to reduce Maryland and in 1652 they established for her a provisional government, with Bennet for Governor and Claiborne Secretary. From 1652 to 1654 they entrusted the government to a "Board of Ten." A civil war broke out, but it was not until 1658 that the proprietary government was reacknowledged. And after the death of Oliver Cromwell, the Colonial authorities of Maryland herself asserted the supreme authority of the people, and that the allegiance of the Colony was due to the King.

For these general facts of history see Holmes University series, and No. 142 of the De Jarnette Papers, entitled Lord Baltimore's case uncased, page 115 of the Report of the Va. Comm., 1873, and documents printed therewith, "Exhibit A." above.

Thus it may well be claimed that the colony of Maryland became an imperial colony by the treaty with the Commonwealth of England and that treaty was never modified or disturbed by any absolute act of Oliver Cromwell. Maryland and Virginia both became imperial provinces of the Commonwealth of England and were both within the prerogative of imperial grant.

Meantime the grant of the Northern Neck of Virginia had been made to Lord Hopton and others which was afterwards confirmed in 1667 by which the river Potomac was granted to these patentees. Lord Baltimore was deprived of his proprietary rights for eleven years or more under the Commonwealth and Cromwell, and again by the King from 1690 to 1715. It was not until 1715 that he was restored to his lord lieu tenancy by King George I. He was restored to his proprietaryship of Maryland. See narrative and critical history of America edited by Justin Windsor, Librarian of Harvard University, vol. III., pages 131, 148, 153 to 168, 517, 536 to
106 542 and 554. But during the time of his deposition his territory had been reduced on all sides. By the decree establishing the southern Pennsylvania border far south of the 40° parallel and by the establishment of the boundaries of the Delaware

territory which had been granted to the Duke of York. And so if the Potomac river had been originally included in the limits of this charter, it was taken away by the grant to Lord Hopton and others, which had been subsequently confirmed by Charles II. upon his restoration to the throne of England. Lord Baltimore never regained the territory taken by Penn from his northern boundary nor did he ever regain the territory of Delaware. And it is submitted that Lord Hopton's grant of the Potomac river and the settlement with the Parliamentary Commissioners by which the ancient limits of Virginia were restored, had the effect to deprive him as effectually of that river, if indeed it ever belonged to him, as had the means by which he was deprived of the territory acquired from his dominions by Penn and Delaware.

Furthermore the State of West Virginia submits that the King of Great Britain and his Council had absolute authority and control over the American Colonies, before the American Revolution and could change their limits and jurisdiction at his royal pleasure. And that therefore it was entirely within the power of the King Charles II. to grant the Potomac river to Lord Hopton and others when he did, although it may have been embraced within the limits of the charter previously granted to Lord Baltimore.

Wherefore the State of West Virginia claims and insists that the boundary line between her and the State of Maryland is the line of low water mark on the north bank of the Potomac river from the division line between Virginia and West Virginia to the head spring of the North Branch of the Potomac river at the Fairfax Stone, and thence running from said Fairfax Stone by the course of the line run by Francis Deakins in 1788 to the Pennsylvania line. And now having fully answered the said Bill of Complaint, the State of West Virginia prays to be hence dismissed with her reasonable costs.

STATE OF WEST VIRGINIA,
By ALFRED CALDWELL,
Its Attorney General.

ALFRED CALDWELL,
Solicitor for West Virginia, the Respondent.
S. L. FLOURNOY &
GEORGE E. PRICE,
Assistant Solicitors.

107 DEFENDANT'S EXHIBIT A.

MARYLAND
vs.
WEST VIRGINIA.

Report and Accompanying Documents of the Virginia Commissioners Appointed to Ascertain the Boundary Line Between Maryland and Virginia.

Richmond:
F. Walker, Supt. Public Printing.
1873.

Office Supreme Court U. S. Filed Mch. 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

108 In Senate, January 30, 1873.

Mr. Roller, from the Committee on Federal Relations, reported the following resolution, which was adopted:

Resolved, That the Superintendent of Public Printing be instructed to have printed for the use of the General Assembly the statements made by the commissioners on the part of the State of Virginia and Maryland, in relation to the boundary line between said States, and also the report of the Virginia commissioners to the Governor.

109 *Report.*

RICHMOND, VIRGINIA, *December 18th*, 1872.

To His Excellency Gilbert C. Walker, Governor of the State of Virginia.

SIR: I am instructed by my colleagues on the boundary commission between the states of Virginia and Maryland, to report to you their proceedings since their last report, and to submit a statement on the part of each state, setting forth their respective claims of boundary.

Maryland claims to the South bank of the Potomac, to Smith's point; thence to Cedar straits, on the E. shore of the Chesapeake bay; thence up the Pocomoke river to where what is called the Calvert and Scarbrough line crosses that river; thence by said line to the Atlantic ocean.

Virginia claims to the North bank of the Potomac, to the extreme southern angle of Point Lookout; thence by a right line to the extremest part of the wester-most angle of Watkins point, at the North headland of Little Annamessex river; and thence by the Calvert and

Scarbrough line to the Atlantic ocean, according to the line run in 1668 by the commissioners on the part of the two colonies, fully and finally confirmed by both Lord Baltimore and the royal province of Virginia.

This difference of boundary embraces eminent domain of great value, and the commissioners of the two states are earnestly endeavoring to agree upon a fair and liberal compromise.

The joint commission met first at Annapolis, whence they adjourned, after examining certain records there, to meet at
110 Crisfield, on the line of the Eastern shore, near the initial and closing point of the entire line between the two states. There, and at Smith's island, on the Tangier sound they took the depositions of near thirty witnesses touching the marks and traditions of the line; and they found a number of marks on Smiths island, besides the natural headland forming the extremest part of the westmost angle of Watkins point, west of the Pocomoke river.

After full conference and comparison of views, it was agreed that the commissioners of the two states should prepare statements of their respective claims and interchange them simultaneously, at their next joint meeting appointed to be in Baltimore, on the first day of October last.

On assembling, the commissioners of Maryland read and furnished a copy of the statement on the part of Maryland. The statement on the part of Virginia was not completed, but was in part read and in part stated orally.

After a full hearing of extreme claims and pretentions on both parts, various propositions of compromise and concession were reciprocally made and considered, and finally all questions were adjourned to another meeting at the city of Richmond, in November last, by which time the statement on the part of Virginia could be completed. The gentlemen of the Maryland commission came on, and, unfortunately, Mr. Wise, of the commissioners of Virginia, was suddenly called off, and Mr. Watts was too ill to attend; no joint meeting was therefore held, and all that could be done was to furnish the commissioners of Maryland with a copy of the statement on the part of Virginia. That has been duly forwarded to the Hon. I. D. Jones, for himself and colleagues; and when they have sufficiently considered it, they will inform the commissioners of Virginia when and where another joint meeting can be held.

111 Thus the settlement is not yet concluded; but a reasonable hope is confidently entertained that a satisfactory adjustment can and will be agreed on.

The accompanying papers discuss the whole matters of law and fact fully, and will, it is thought, satisfactorily explain the difficulty and delay of this work by its vast volume of history.

Paper "A" is a statement of the commissioners on the part of Maryland. It has no appendix of matter referred to.

Paper "B" is the statement of the commissioners on the part of Virginia.

Paper "C" is the appendix of paper "B" containing the most important matters referred to therein.

Since the last report, two other manuscript volumes of the McDonald papers have been found, in addition to the three volumes found by the commissioners in the state library. There are now five of those volumes, several of them mutilated. The two lately recovered were handed in to the librarian of the state by Mr. Thomas Wynne, of this city, but they were received by the commissioners not in time to be closely examined for the uses of their work, though it is thought that they contain but little pertaining to the subject of boundaries between Maryland and Virginia. The more important evidences of Virginia's claims were to be found in the papers brought by Mr. De Jarnette from England, and they have been found richly worth all the cost and expenditure of sending for them.

The Maryland archives respecting the Calvert and Scarbrough line of 1668, from Watkins point to the ocean, aided by these papers, make the claim of Virginia certain and conclusive.

The cost of sending to England consumed a large part of the appropriations, and that added to the pay of the commissioners
112 has entirely exhausted them. The state is now in arrears to the commissioners, as the auditor's accounts will show.

If the boundaries are settled by the joint commission, the line will have to be run and permanently marked by a detail of surveyors from the office of the U. States coast survey.

The cost of that, and the pay and arrears of pay of the commissioners, will, it is estimated, require an additional appropriation of ten thousand dollars, ($10,000).

If not adjusted by the commissioners, most important interests of the state require that she shall resort to the Supreme Court of the United States. That will require at least the same amount of appropriation of $10,000 to begin with, and ten times that amount may well be expended to save the state's interests in the riparian rights of the Potomac river; in about 50 square miles of land on Smiths island, and south of the Little Annamessex river, and north of the Pocomoke sound, on the main; and in about 300 square miles of oyster beds, in the Chesapeake bay, and in Tangier and Pocomoke sounds.

During the past year, the town of Crisfield, exactly on the Calvert and Scarbrough line, at its terminus on the Little Annamessex, shucked and shipped to the markets, mainly in the West, one million of gallons of oysters, costing at the place where sold, an average of one dollar and eight cents per gallon, and bringing in the markets an average profit of 100 per cent.

The place employs 250 vessels, 1,500 catchers, about the same number of openers and packers, has fifteen packing houses, and sells as many oysters in the shell as are sent to market opened. The trade of the mouth of the Little Annamessex in oysters is worth from three to four millions of dollars per annum. Maryland, at present, derives more than four-fifths of its profits and revenues. The
113 stakes in this boundary question therefore, are worth, on the whole line in dispute, too many millions of dollars to be lightly relinquished or to be neglected.

Your commissioners have, therefore, taken full time for thorough

and elaborate investigation, and their task has been immense, in reference to history, to manuscripts, to state papers, to the laws of two states, to maps, reports, records, old patents and archives, until they have developed and embodied a mass of valuable history, besides what pertains to the question of boundary, and much of its important matter is new.

They therefore urge that your excellency will lay this report and accompanying papers before the general assembly, with the request of a liberal appropriation to meet either contingency of amicable adjustment or resort to the Supreme Court of the United States.

They retain the papers of the commission in their charge, with their journal, until they shall make a final report.

All which is respectfully submitted.

I have the honor to be,

Your Excellency's most obedient servant,

HENRY A. WISE.

By order of the Commissioners on the part of Virginia.

114 A.

Statement on the Part of the Commissioners of Maryland.

The Boundary Line Between Maryland and Virginia.

Some question has been made as to the accuracy of the commonly received charter of Maryland, and its English version, as contained in Bacon's Laws, published in 1765; but a careful examination and comparison of the translation of the charter, printed in London in 1635, in the "Relation of Maryland," and as printed in Bacon's Laws in 1765, and as contained in the "Transcript of the original instrument in Latin, with the abbreviations extended, copied from the Patent Roll and Charles I., and translated by Thomas Edlyne Tomlins, Esq., attorney at law and record solicitor, at London, in 1871, "for the Virginia commissioners, show that there is no substantial difference among them in the description of the territory granted to Lord Baltimore by the charter of the 20th day of June, 1632, or in any other particular. In Mr. Tomlins' translation, the bounds of the territory are described thus:

"Of a grant to him and his heirs, to Cecil, Baron of Baltimore, the King, &c., to all whom, &c., Greeting:

'Know ye, therefore, That we, regarding with royal favor the pious and noble purpose and intention of the aforesaid Baron of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by this our present charter for us, our heirs and successors, do give, grant and confirm
115 to the aforesaid Cecil, now Baron of Baltimore, and his heirs and assigns, all that part of the Peninsula or Chersonese lying in the parts of America between the ocean on the east, and the bay of Chesapeake, on the west, divided from the remnant of the

same by a right line drawn from the promontory or headland called Watkins point, beside the bay aforesaid, situate near the river of Wighco, on the west, as far as to the great ocean on the eastern coast, and between that boundary, on the south, as far as to that part of the estuary of the Delaware, on the north, which lieth under the 40th degree of north latitude from the equator, where New England is bounded; and all that tract of land within the boundaries underwritten—that is to say, going from the said estuary, called Delaware bay, in a right line, in the degree aforesaid, to the true meridian of the first source of the river of Potomac; then tending downwards towards the south to the further bank of said river, and following it to where it faces the western and southern coast as far as to a certain place called Cinquack, situate near the mouth of the same river, where it discharges itself into the forenamed bay of Chesapeake, and from thence, by the shortest line, as far as to the aforesaid promontory, or place, called Watkins point, so as all the tract of land divided by the line aforesaid, between the great ocean and Watkins point, as far as to the promontory, called Cape Charles, and singular their appendages to us, our heirs and successors, are entirely remaining forever excepted. And also all islands and isles within the limits aforesaid. We do also grant and do confirm to the same Baron of Baltimore, his heirs and assigns all and singular islands and isles on the eastern shore of the aforesaid country, towards the east, risen or to arise in the sea, within ten sea leagues from the same shore, with all and singular ports, roads of shipping, estuaries, flowings
116 of water and arms of the sea, to the country or islands aforesaid belonging."

Where Was Watkins Point?

The first inquiry is, where was the point, called Watkins point, described as the beginning bounder, from which was to be drawn the right line across the *peninsula* to the ocean? It is scarcely necessary to remark, after the many proofs we have seen and heard of the great changes in the "points" shores and islands of the Chesapeake bay and its tributaries, which have taken place especially in that vicinity and within the memory of living witnesses, and which are still going on, that the place called Watkins point, in the charter to Lord Baltimore, has long since been washed away, or does not now exist as it then was.

Let us examine, then, the description of it as contained in the charter. Mr. Tomlins translates it "promontory," "headland," or "*place*," the same words which are used in Bacon's translation, while in the "Relation of Maryland," it is called "promontory," or "cape of land," and "place." "Besides the bay aforesaid, situate near the river of Wighco," (Tomlins;) "situate upon the bay aforesaid, near the river Wighco," (Bacon;) "situate in the aforesaid bay near the river of Wighco," (Relation of Maryland.)

In Ogilby's America, published in 1671, "the bounds" of his "New Description of Maryland," in words nearly identical with those in the "Relation of Maryland," are contained, between quota-

tion marks, ending with the last boundary line, thus: "Unto the aforesaid promontory or place, called Watkins point, which lies in thirty-seven degrees and 50 minutes, or thereabouts, of northern latitude." It is probable that the places mentioned in the charter upon the Chesapeake bay, were known with reasonable certainty by intelligent Virginians residing in the Virginia colony at that
117 time. The Chesapeake bay, and many of its principal rivers, had been explored by Capt. John Smith, with fourteen others, in a barge of two or three tons burthen, in June, July and August of 1608, the year after the first settlement at Jamestown. Smith had made a map of his explorations, and had written a general summary of the results of his two expeditions, and some of those who accompanied him had written a more detailed and particular account of his exploration of the bays and rivers and islands, all of which Smith had published in London, first in 1612, and afterwards in 1629. Lord Baltimore had passed the winter of 1628-9 in his province of Avalon, Newfoundland, and had become so dissatisfied with it as a residence that he wrote to the King August 19th, 1629, requesting a grant of land in Virginia, with a view to settle there. Without waiting for a reply, he went to Virginia about the first of October, 1629, and visited Jamestown. Beverly, in his history of Virginia, says: "The people there looked upon him with an evil eye, on account of his religion, for which alone he sought this retreat; and by their ill treatment discouraged him from settling in that country." On that account, Beverly states, he made a journey northward, up the Chesapeake bay, with a view of making a new plantation of his own. And finding that the settlement at that time reached no further than the south side of the Potomack river, "his lordship got a grant of the proprietary of Maryland."

Beverly made a mistake in the date of this visit, in stating it to have been in 1628, and in stating the name of the Lord Baltimore who made this visit and exploration as Cecelius, instead of George Calvert; but the fact of his personal explorations of the Chesapeake bay in 1629, enabled him, with the aid of Smith's Hist. and Map, more accurately to describe the bounds of the territory, for
118 which he afterwards obtained a grant. He had been one of the Virginia companies whose charters had been declared forfeited by the judgment of the Court of King's Bench in 1624, upon a writ of *quo warranto,* and also a member of the provisional government formed by the king, after the province was thus restored to him, and doubtless was well informed about the affairs of the colony. About 1622, the Virginia colony numbered 1,275 whites, 76 of whom lived on the Eastern shore. The settlement on the Eastern shore of Virginia was made in 1620, "neere Accomack" an Indian town located on Smith's map near the Cherriton, now Cherrystone river. One plantation was for the use and profit of the company, another for the governor, and one for the secretary of the province "in lieu of salaries," &c., which plantations were to go to their successors in office. Pory was secretary of the colony and made two excursions in 1620 to the Eastern shore, an account of which was published in Purcha's Pilgrims, in 1625, and is men-

tioned in Smith's history, vol. ii, page 40. Pory mentions passing Russles Isles and *Onancock,* on his way from the Eastern shore to Patuxent, which he visited on the invitation of and in company with the king of a large tribe on that river.

Rogman, vol. 1, p. 149 (note) says: "the original account of Pory's travels probably contained a description of Russle's isles, Onancock and Patuxent, which Smith thought 'needless to be writ againe' in this part of his work; but it does not appear that Onancock was ever before mentioned by him therein." But it is mentioned as well known to the Virginians at that time. It appears that during the years 1627, 1628 and 1629, the governor of Virginia gave authority to William Clayborne, the secretary of state, to explore the Chesapeake bay, and this says Chalmer's Annals (ch. ix., note 12),
119 was in pursuance of special instructions from Charles the First to the governor of Virginia to procure exact information of the rivers of the country. Clayborne and his associates were extensively engaged in trading with the Indians of the Chesapeake and its tributaries, and in May, 1631, obtained a license from King Charles I., authorizing him, his associates and company, from time to time, to trade for corn, furs, &c., with ships, boats, men and merchandise, in all seas, coasts, harbors, lands or territories in or near about those parts of America for which there is not already a patent granted, to others for sole trade, with command to Governor Henry, of Virginia, to permit such trade; giving to Clayborne full power to direct and govern, correct and punish such of our subjects as may be under his command, in his voyages and discoveries." It was under this license of 1631, to trade, or the former license to explore the Chesapeake and trade, &c., that Clayborne and company assumed to make the settlements upon Kent and Palmer's islands, in the Chesapeake bay, which were afterwards made the basis of objections to Lord Baltimore's charter.

Lord Baltimore's religious faith precluded his taking the oath of supremacy, whereupon he was notified that he could not settle in that colony. After exploring the Chesapeake bay, with a view to obtain a grant of land, north of the Virginia settlements, for a plantation of his own he left his lady in Virginia and hastened to England. On his arrival there he found a letter from the king, dated 22nd November, 1629, advising him to desist from his designs to settle in America. Neill, 47.

Gov. John Pott, Samuel Matthews, Roger Smyth and Wm. Clayborne, in a letter to the Privy Council of November 13, 1629, gave an account of Lord Baltimore's arrival in Virginia, about the beginning of the preceding October, and his refusal to take the oath of supremacy, and prayer that "As they have been made
120 happy in the freedom of their religion as heretofore, no Papists may be suffered to settle among them." Neill, 47. Probably Lord Baltimore was not aware of this persistent opposition to his settling in Virginia, for in December, 1629, he wrote a letter to King Charles asking a letter from the privy council to the governor of Virginia in behalf of his lady, still there, to aid her in returning to England; and also prays for a grant of a portion of land

in Virginia, the king having given him leave to choose a part. (Neill's Terra Marie, 4.)

Doubtless Lord Baltimore's purpose was well known in Virginia, for, during the spring of 1830, "Francis West, who had been governor, Wm. Clayborne, secretary, and Wm. Tucker, one of the council, were in London, resisting the planting of a new colony within the limits of the settled parts of Virginia." (*Neitt* 50.) Under these circumstances there is every reason to believe the boundaries of the province were well considered by the king before the charter passed under the great seal. It had been prepared by Lord Baltimore during his leisure hours; had been submitted to and approved by the king, but before it had passed through all the formalities George Calvert, the first Lord Baltimore, died on the 13th April, 1632. Three months after that date the patent was regularly issued to Cecil, the second Lord Baltimore. Those who had resisted the granting of the patent made immediate efforts to obstruct Lord Baltimore in his preparations to occupy his province. A remonstrance was presented to the king in May, 1633, "that some grants have been lately obtained of a great portion of lands, and territories of the colony there, being the places of their traffic, and so near to their habitations as will give a general disheartening to the planters," &c.

The king on the 12th May, 1633, referred the petition to the privy council. On the 4th June, 1633, the council appointed the
121 28th of that month for the hearing, giving notice to all the parties interested to attend. The hearing was had accordingly, and an order was passed that Lord Baltimore and the planters of Virginia (meaning of course their agents and attorneys in England) should meet together, between then and the third of July, 1633, and endeavor to accommodate their controversy in a friendly manner. Also that the propositions made by either party should be set down in writing, with their several answers and reasons, to be presented to the board on that day.

This was likewise accordingly done; and at a meeting of the council, on third July, 1633, they decided "to leave Lord Baltimore to his patent and the other parties to the course of law, according to their desire." Chalmer's Annals, ch. 9, note 18.

Lord Baltimore then proceeded to occupy his patent, and the settlement was made at St. Mary's on the 27th March, 1634. Clayborne continued his opposition to Lord Baltimore's authority over Kent island, fitted out an armed expedition in 1635, under command of Lieutenant Warren, to seize and capture any of the pinnaces or other vessels belonging to the government of St. Mary's. The government of St. Mary's also armed two pinnaces, under the command of an officer, and the hostile forces met, says Bozman, in April or May, 1635, in either the Pocomoke or Wighcomoco rivers, on the eastern shore of the province, where a battle commenced "which resulted in the death of Lieutenant Warren and two of his men, and of one of the Maryland men." Bozman's Hist. of Md. i vol., 35.

Clayborne had before this fled to Virginia, and Governor Harvey declined to surrender him to the demand of the governor of the Maryland province, but sent him and the witnesses to England.

Here Clayborne and his partners in trade (two merchants
122 in London) presented a petition to the king, about 26th February, 1637, setting forth that by "virtue of a commission under his majesty's hand divers years past, they discovered and planted the isle of Kent, in the bay of Chesapeake, which island they had bought of the kings of that country; that great hopes for trade of beavers and other commodities were like to ensue by the discoveries; and that Lord Baltimore, observing this, had obtained a patent," &c. They then gave their version of the "battle," and of Lord Baltimore's seizure of the isle of Kent and another island at the head of the bay, which they purchased from the Indians and upon which they had settled a plantation and factory, &c. They prayed for a grant of confirmation "for the quiet enjoyment of their said plantations," and to refer their "wrongs and injuries to such person as his majesty should think fit." The petition was referred to the lord's commissioners of plantations who, after "a tedious controversy, and after hearing all parties made their adjudication on the 4th April, 1638." A copy of their report is recorded in the Maryland Records of Council Proceedings, from 1636 to 1657, p. 8. A copy is also published in Hazard's Collections, vol. i, p. 130, purporting to be from "Votes of Assembly of Pennsylvania," and by Chalmer's Annals, ch. 9, note 25, taken, as he states, from "Maryland Papers, vol. i, bundle C, in the plantation office, England." A copy is also published in Bozman's Maryland, vol. 2, p. 584, note xi. The substance of their adjudication was "that the lands in question absolutely belonged to Lord Baltimore, and that no plantation or trade with the Indians ought to be allowed within the limits of his patent without his permission; that with regard to the violences complained of, no cause for any relief appeared, but that both parties should be left to the ordinary course of justice." Clayborne,
assisted by Sir Wm. Alexander, the king's secretary for *for*
123 Scotland, and Clayborne's patron in the business, "partly by misrepresentation," as Chalmers observes, procured a letter from the king, dated 14th July, 1638, to Lord Baltimore, commanding him to permit Clayborne and his partners to be safe in their persons and goods there till that course be decided. Lord Baltimore, on receiving the order, as Chalmers proceeds to state, said that he "would wait on the king and give him perfect satisfaction." Subsequent events justify us *in* supposing that when the king came to be fully informed of all the circumstances relative to Clayborne's claims, and Lord Baltimore's rights, the adjudication of the lord's commissioners was finally ratified by his majesty. Bozman, vol. 2, p. 72. "In virtue of this decision of the lord's commissioners, and, most probably, in pursuance of some special order from his majesty to that purpose, the governor of Virginia, Sir John Harvey, issued his proclamation, bearing date the 4th of October, 1638." Bozman's Maryland, vol. ii, p. 72. This proclamation (copied from the said "Council Proceedings from 1636 to 1657, p. 319," and published in Bozman's History of Maryland, vol. ii, p. 586) is in the following words, to-wit:

"By the Governor and Captain General of Virginia, with the Advice and Consent of the Council of States.

"A Proclamation.

"Whereas, the king's most excellent majesty was pleased by his letters patent to grant unto the right honorable, the Lord Baltimore, a territory or tract of land therein nominated, and now known by the name of the province of Maryland, with divers franchises and immunities thereunto belonging, as in and by the said letters patent more at large appeareth: notwithstanding which said royal grant and publication thereof in this colony, divers persons, ill-
124 affected to the government established by his majesty both here and in the said province, have, by pretence of a former commission, factiously combined to disturb the said Lord Baltimore in the possession of his said territory, as also to infringe the privilege of trade, in express terms solely granted to the said Lord Baltimore within the said province; and after many violent and disorderly courses the said pretenders have so far proceeded as to petition his majesty that part of said province now known by the name of the island of Kent & Palmer's island, with the trades thereof, might be confirmed to them, the consideration of which, their said petition, his majesty was pleased to refer to the most reverend and right honorable the archbishop of Canterbury, the lord keeper of the lord privy seal, and any others, the commissioners for plantations, who should be near at hand, and whom their lordships were pleased to call: whereupon their lordships meeting, after a full hearing of both sides, the said pretenders' commissions being likewise read, their lordships did declare the right and title to the isle of Kent and other places in question, to be absolutely belonging to Lord Baltimore (and that no plantation or trade with the Indians ought to be within the precinct of his patent without the license from him), as in and by the order of their lordships, more at large appeareth:

"These are, therefore, for the future preventing of further mischiefs and injuries, which may arise from ignorant mistakes of presumptions and pretences, as formerly, in his majesty's name, to prohibit all persons, being or inhabiting, or which shall hereafter be and inhabit within the government of this colony, by themselves or others, either directly or indirectly, from the date of these presents, to use, exercise or entertain any trade or commerce, for any kind of commodity whatsoever, with the Indians or savages
125 inhabiting within the said province of Maryland, viz: northward from the river Wiconowe, commonly called by the name of Onancock, on the eastern side of the grand bay of Chesapeake, and northward from the river Chinquack, called Great Wicomico, on the western side of the said bay; and for the better regularity of all trades within the said colony, it is further hereby commanded that no person shall resort unto the habitations of the aforesaid Indians without license first obtained for their so doing from the Lord Baltimore, or his substitute, upon forfeiture of the goods and vessels, or the full value of them, which shall be lawfully evicted to be traded or employed contrary to premises, with such further punishment by imprisonment of the parties or party offending against the true in-

tent and meaning of the said proclamation, as shall be thought fit by the government and council.

"Given at James City, the 4th of October, Anno Regin Regis Caroli decimo quarto, Anno Domini, 1638. God save the king.

"Vera copia.

RICHARD KEMP, *Secretary.*"

The above proclamation was doubtless well known to every intelligent inhabitant of the Virginia colony at that day. The outlines of the Chesapeake bay and the rivers and islands as laid down on Smith's map, had been made during his exploring expeditions in 1608, or from minutes and memoranda then made. His history and map were published in 1612 and 1629, and being the only map then extant containing the names of places mentioned in Lord Baltimore's charter, was, doubtless, the guide of the king and Lord Baltimore in describing the boundaries of the province granted by the charter. Smith's Map was made under such circumstances, and on so small a scale, that nothing more than a general
126 idea of the places described could be reasonably expected.

Bozman (whose history of Maryland was written about 1811) says: "It is wonderfully correct, considering the time and circumstances under which it was made; yet it is certain that by comparing it with the latest and best maps of the Chesapeake, particularly Griffith's Map of Maryland, we may perceive material errors, especially in those parts of it contiguous and adjacent to Watkins point."

A pamphlet had been published in London by Lord Baltimore, in 1635, entitled "A Relation of Mayland; together with a Map of the Country, The Conditions of Plantations, and His Majesty's Charter to Lord Baltimore, translated into English." This pamphlet was evidently published to show the boundaries and location of the Maryland Province, and to induce immigrants to settle in it. The boundary line between Virginia and Maryland is dotted along the Southern shore of the Potomac River to its mouth, and down the bay shore to the place called Cingnack, and thence across the bay by a line (a little to the North of East) to the Southernmost point of land washed by the waters of Chesapeake bay on the West and South, and by the waters of the Wighco, now Pocomoke river, on the East, and called Watkins point; and thence by an East line to the ocean. This East line is about on the 38th degree of North latitude, as laid down on this map; and on Smith's Map the 38th degree is placed still further South. These errors were common in the maps of that day. Lord Hardwicke remarked, in the case of Penn *vs.* Lord Baltimore, that "It is a fact that latitudes were then fixed much lower than they have been since found to be by more accurate observations.

But whatsoever errors were made in fixing the degrees of latitude on maps, the position of land marks and rivers was known and certain.

127 When, therefore, the proclamation forbids trade with the Indians or savages within the said province of Maryland, to

wit, northward from the river Onancock, on the eastern side of the bay of Chesapeake and of the Great Wighcomico, on the western side of the said bay, it indicates, at least, that those rivers were nearest to the boundaries called for in Lord Baltimore's charter, and for the purposes of the proclamation, were to be regarded as the Southern limits of Maryland. It may be fairly considered evidence that Watkins point, at that time extended so far South as to be West, or nearly West, of Onancock river, so that an East line from it to the ocean would pass along or near that river. Neither of those rivers were located or named in either Smith's or Lord Baltimore's map. Cinquack was called for, in the charter, as the point from which the last line was to be run, to the beginning bounder at Watkins point; and the tradition is so fully proved that the main land originally extended in one unbroken point to Watts island, the southern end of which at that time was probably so nearly west of Onancock river as to confirm the implication that Watkins point was at the southern end of what has since become known as Watts island.

The tradition is that Fox island and Watts island were formed by the action of the waters of Chesapeake bay, breaking through the neck of land into Pocomoke bay. It was fully proved before the joint commissioners that great changes have taken place in those islands by the washing away which has occurred within the memory of many living witnesses, and that very many large stumps of trees are in the waters and marshes adjacent to them. The fact led Lieutenant Michler, in his report to the joint boundary commissioners, in 1858, to remark that "stumps of trees are said to exist in the marshes and in waters between the main land and Watts
128 island, showing that it probably was once one continuous neck of land as far south as that island."

Bozman makes this remark upon the proclamation, vol. ii, p. 73, note: "From these expressions in this proclamation it may be inferred that the thirty-eight degree of latitude was then deemed to cross the eastern shore of Virginia as low down in Accomac county as Onancock creek, or, at least, that the Southern limits of Maryland extended that far south. As to the restrictions of the Virginians in their trade on the western side of the bay, within the Cinquack called Great Wicocomico river, it is not impossible that in consequence of the expression in the charter of Maryland as to the South bounds thereof ('following the Potomac on the West and South unto a certain place called Cingnack, situate near the mouth of the said river Potomac'), the Southern limits of that province, at least, as to the jurisdiction over the bay of Chesapeake, were deemed to extend to the mouth of the Cingnack. It is probable that most of the trade with the Indians was at that time carried on by water in different parts of the bay and its tributary streams." The proclamation was deemed to be of such importance that it was recorded among the proceedings of the governor and council of Maryland. So also was the adjudication of the privy councils aforesaid dated 4th April, 1638. After the death of Charles I., Clayborne again threatened to attempt to take possession of Kent island by force, and an act of the Maryland assembly was passed in 1650 in reference to the said

threats, in the preamble to which the order of the privy council of the 4th April, 1638, and the "proclamation made and published in Virginia the 4th of October, 1638, by the authority of the then governor there, with the advice and consent of the council of state," are specially recited. The next reference to the boundary of Maryland is found in a letter of instructions dated 26th August, 1651, from Lord Baltimore to his governor, Wm. Stone. In this letter,
129 Lord Baltimore refers to certain false rumors he had understood to be rife in the province "of a dissolution or resignation here of our patent and right to that province"; and that he had understood "that Sir William Berkeley had lately taken upon him to grant a commission to one Edmond Scarborough, of Accomac, Virginia, to seat Palmers island with our said province, and to trade with the Indians, &c.," which was so strange a usurpation that he could not easily believe it to be true; but in case the said Scarborough, or any other, should presume to seat or trade in or through any part of his province without his authority, he required the governor to prevent him or them from so doing, and to seize upon his or their person boats and goods, &c. And after numerous other instructions upon a variety of subjects, he adds: "And for the better publication and remembrance of the bounds between Virginia and Maryland, and prevention of any controversies which may otherwise hereafter happen between the inhabitants of Virginia and those of our said province about the same, we require you, our said lieutenant, to encourage some English, as soon as you can, to take up such lands as shall be due unto them in our said province, near to the bounds of our said province, according to the maps thereof, which we sent thither about two years since, and to pass grants in our name, under our great seal, to such as shall desire the same, of so much land in those parts of our said province, as shall be due unto them as aforesaid; especially on our near the bounds of our said province; on that tract of land which is commonly called the Eastern shore, lying between the bay of Chesapeake and the sea." Unfortunately those maps cannot be found. They were sent over (and probably made) some sixteen years after that of 1635, before mentioned. In another letter of instructions from Lord Baltimore to his governor and council, dated 23d October, 1656, among other items is the following, to-wit: "That they do take special care that no encroach-
130 ments be made by any upon any part of his lordship's said province; for the better prevention whereof, his lordship requires his said lieutenant and council to *cause the bonds thereof to be kept in memory and notoriously known; especially the bounds between Maryland and Virginia on that part of the country known there by the name of the Eastern shore*, to which his lordship would have them peruse one of the maps of Maryland, which his lordship formerly sent thither, whereby the said bounds are described; and his lordship hath also for their direction therein, sent herewith, a copy of a proclamation published heretofore by the then governor and council of Virginia for prohibiting any of Virginia to trade with the Indians in Maryland without his Lordship's lycense, which proclamation bore date 4th October, 1638, and therein are described

the bounds between Maryland and Virginia; the said copye having bin transcribed out of another copie thereof, which his Lordship hath attested by Mr. Richard Kemp, deceased, who was secretary of Virginia when the said proclamation was made. Given under his lordship's seal at arms, 23d October, 1655.

"C. BALTIMORE."

Maryland Council Book, H. H. 1656 to 1668, p. 4.

It is thus shown with certainty, that as late as 1656, Lord Baltimore, in an official paper, addressed to his governor and council in Maryland, charges them to guard, with special care, against encroachments upon any part of his province, and directs them to the proclamation of the 4th of October, 1638, as a public document, published by the government of Virginia, wherein are described the bounds between the two provinces.

Charles I. had described in the charter the line of division of the Eastern shore peninsula, specially reserving all that part of
131 it South of the divisional line for himself, his heirs and successors. The governor and council who issued the proclamation were appointed by him, and were not likely to do any act to the prejudice of his rights. The council were especially known to be hostile to Lord Baltimore. For eleven years, during the king's life, and in the fulness of his power, the proclamation remained unquestioned.

After his death, and after the parliament took in hand the government of England, Clayborne and Bennet, influential Virginians, the special enemies of Lord Baltimore, together with Captain Curtis, claiming to act under a commission from the council of state for the commonwealth of England, took possession of the government, both of Virginia and of Maryland, and had control over the latter from 29th March, 1652, for several succeeding years. If there had been error in describing the limits of Lord Baltimore's charter in the proclamation of 1638, these intelligent Virginians must have been aware of it; and especially Clayborne, who was not only a "person of quality and trust," as described by King Charles I., in the commission to him as secretary of Virginia, dated 4th March, 1625; but was unquestionably a man of intellectual ability, and residing in the colony, with fullest opportunities of perfect knowledge of all the affairs of the colony.

It is not likely with the power in his hands, with his known hostility to Lord Baltimore and his charter, that he would let slip an opportunity to correct an error, if such was known or supposed to exist in the proclamation, as to the bounds of the Maryland province, whilst their authority over Maryland existed. Special care was taken to have Clayborne's own claim to Kent and Palmers islands revived and recognized. His friend and colleague in governing Maryland, Richard Bennet, was one of the negotiators of a
132 treaty with the Susquehanna Indians, on 5th July, 1652. The treaty recognized the rights of the English nation "to all the land north of the Patuxent and Choptank rivers, excepting the isle of Kent and Palmers island, which belongs to Captain Clay-

borne." Again, in November, 1652, when the government of Maryland, then acting under the authority of Clayborne and Bennet, directed an armed expedition to be fitted out against the Eastern shore Indians, the Southern bounds of Maryland are especially referred to in the order of appointing Captain Fuller to the command of the expedition. His commission was "to march against all or any Indians inhabiting upon the Eastern shore of the bay of Chesapeake, *to the northward of the southerly bound of this province, on that side of the bay, being over against Wicokomico point;* and from thence in a direct line eastward to the main ocean."

Wicokomico point, here mentioned, was doubtless the point projecting into the bay from the north shore of the Great Wicokomico river, on the Western shore near "the place called Cinquack"—the words "over against," meaning "opposite to." This point, although not named, is distinctly laid down on the map, in the "Relation of Maryland," and the line dotted; thence to Watkin's point; thence to the ocean, is nearly an east line. We think there can be no doubt that the Pocomoke river was originally called by the Indians Wighcocomico, which Smith abbreviated on his map to Wighco. Smith and his associates explored the river and had intercourse with the natives residing upon it. Smith's general summary of his voyages up the bay was evidently written some time after they had been completed. Whereas the two accounts written by his associates are more in the form of a diary, at least following a consecutive form, giving the events in the order of their occurrence, as if
133 written during the voyage. Dr. Russel, Todkill and Mumford call the river Wighcocomico in three places on one page. (Smith's History, vol. i, page 175.)

After two days more, spent among unhabitated isles, after leaving the river Wighcocomico, going north, "they came to the river Cuskaramark," admitted to be the Nanticoke. Smith, (reversing the actual order of his expedition, as if he had gone up the western shore and returned by the Eastern shore) after describing the bay, describes the rivers of the Western shore, as far as he explored them, to the head of the bay. He then mentions, on the East side of the bay, the river Tockwough, (the present Sassafras,) the Rappahannock, (probably now Fishing bay, in Dorchester county,) "near to which," he says, "is the river Kuscaramaock." "After that is the river Wighcocomico." "The people of those rivers are of little stature, and of another language from the rest, and very rude. But they on the river Acoahanock and they of the Accomack doth equal any of the territories of Powhattan, and speak his language, who over all those doth rule as king." Dr. Russell and the others, state that "this river, (the Cuscarawack,) but only at the entrance, is very narrow, and the people of small stature as those of Wighcocomoco;" evidently meaning the Wighcocomoco which they had explored as high as the cross on the map, and of which they had given a particular account.

There is not the slightest intimation in Smith's History or Map that he ever saw or heard of any other Wighcocomoco river on the Eastern shore of the bay. Smith, in describing the rivers of the

Western shore, begins with the Powhattan, (the James river, then describes the Pawunkee and Tappahannock, and says "the fourth river is called the Potomake, six or seven miles in breadth."

134 First, on the south side, at the very entrance, is "Wighcocomico." (Smith's History, vol. i, p. 118.) Afterwards, on the 120 page, describing the rivers on the East side of the bay, coming South, he says: "After that (the Kuscarawaok) is the river Tants Wighcocomico;" evidently meaning the Wighcocomico, described by Dr. Russell and Co., and called by Smith Tants Wighcocomico to distinguish it from the other Wighcocomico on the Western shore "at the very entrance of the Patowmaock;" which latter Wighcocomico is not mentioned at all in the account written of Dr. Russell & Co. We cannot therefore see, if Smith's History had been carefully examined, how any question could have arisen about the identity of the river Wighco, mentioned in Lord Baltimore's charter, with the river since known as the Pocomoke. Some question, however, in relation to the bounds between Maryland and Virginia, (but what it was does not appear,) seems to have assumed importance during the time Bennet and Clayborne ruled over Maryland. Cromwell was said to have written some letters to Bennet and Clayborne in January, 1655, upon this subject. But all we know of their contents is the explanation of their purport, given by Cromwell, in a letter to the same persons, as commissioners of Maryland, dated 26th September, 1655. In this letter he says, "our intention was only to prevent or forbid any force or violence to be offered by either of the plantations of Virginia or Maryland, from one to the other, upon the differences concerning their bounds—the said differences then being under the consideration of ourself and council here." "The differences", whatever they were, remained undetermined by Cromwell and his council at the time of his death. The persistent efforts of Clayborne and Bennet, during their reign over Maryland, having failed to induce parliament or Cromwell to interfere with Lord Baltimore's proprietary rights, the government

135 of his province was finally restored to him in March, 1657-'8.

Up to this time no settlements upon the Eastern shore, within the limits of Maryland, below Choptank river, had been made under grants of land by Lord Baltimore, so far as we have been able to ascertain.

The settlements on the eastern shore of Virginia had extended northward from the first plantations. A letter from Colonel Edmond Scarborough to the governor and secretary of Maryland, in relation to a war he was about to prosecute against the Assatege Indians, bears date, "From Onancock, 28th August, 1659;" and that place was probably then his residence. Early in the session of the Virginia assembly of 1660, they passed a stern law against the Quakers, forbidding their being brought into the colony; requiring all Quakers, on detection, to be imprisoned without bail, till they took an oath to leave the country, and gave security that they would never return, with other most stringent provisions. (I. Howison's History of Virginia, 319.) This act doubtless enabled the governor

of the Maryland province to comply with Lord Baltimore's orders of 1651 and 1656, to people that part of his territory on the Eastern shore next adjoining to Virginia.

A commission issued by Gov. Philip Calvert, dated on the 6th of November, 1661, to Col. Edmund Scarborough, Randall Revell and John Elzey, authorizing them, or any two of them, for the term of six months, to grant warrants for land upon the Eastern shore of this province, in any part below Chaptank river, upon the conditions therein described, recites that it was issued upon "the petitions of divers persons well affected to this province now, or late inhabitants of Northton county, otherwise called Accomack, in Virginia, who are desirious to transplant themselves and families into this
136 province." Scarborough, Elzey and Revell were residents of the Eastern shore of Virginia, and were empowered to grant warrants for fifty acres of land for every person transplanted, on condition that before warrant granted each person should take the oath of fidelity to Lord Baltimore before two of the commissioners being in Maryland. Randall Revell and John Elzey themselves settled at Manoakin, and on the 2d of May, 1662, Randall Revell reported to the governor that there were then "seated 50 titheable persons at Manoakin and Annamesses," and desired that "course might be taken for the supply of the plantation or continuance of the commission to himself and the others." On the same day it was ordered, "that the commission for granting warrants for land, dated 6th November last, be renewed to Col. Edmund Scarborough, Randall Revell and John Elzey, to continue until recalled." This commission seems to have been continued until 4th February, 1663, on which day a commission, in similar terms, was issued by Governor Charles Calvert to John Elzey, Randall Revell and Stephen Horsey. Scarborough was thus left out of the commission, but that he had accepted the trust and acted under it appears from a reference to him in a document dated June 3d, 1664, issued by Governor Charles Calvert, appointing Philip Calvert to deliver a copy of it to Governor Berkley, of Virginia, &c. This document had special reference to the claim then recently set up by Virginia to the territory settled at Manoakin and Annamessex, and to Col. Scarborough's armed invasion of that part of Maryland in October 1663. This document states that Col. Scarborough "did, about the tenth day of October last, in a hostile manner, enter many miles into this province, to the terror of the people at Manoakin and Annamessex, beating, abusing and imprisoning *the people there by him long before seated by virtue of a commission from this government directed, and contrary to his certain knowledge of the bounds of said province.*" That most extraordinary claim seems to have
137 originated with Col. Scarborough. The first notice of it to the Maryland authorities appears in a letter from Mr. John Elzey, dated "Manoakin, this —th March, 1662," (but actually 1663 N. S.), to Mr. Serrell secretary of Maryland, as this document shows the origin of the controversy as to the true location of Watkin's Point, and the action of the Maryland authorities upon the

first notice of it, we copy the proceedings as they appear in the Maryland records. Liber H. H., folio 170.

H. H. 170.

"At a Council held at St. John's, 8th April, 1663, was read a letter from Mr. John Elzey to Mr. Small, secretary:

"HONORABLE SIRS: By the last opportunity of conveyance, which was by John Anderson, we gave your honors account of what Col. Scarburgh writ to Mr. Revell as concerning their claim to this place, and have ever since expected some instructions from the hon'ble lieut. gen'l how we should answer him if he should come up. But as yet can hear none. Since the time of writing my business drew me down to Accomack, where Col. Scarborough arrested me at his majesty's suit, and made his demand of obedience and rights for land, the copie whereof I have enclosed, and the copie of my answer to it, without which I could not have done my business nor have returned home before I had been at Jamestown, where I do believe it would have been exacted more particularly, Col. Scarborough telling me that my answer was like to that of the oracle of Delphos. When he had my response, he told me that if he could he would be up with us before Jamestown court, if not, presently after, and make the same demand of every particular person,
138 and on denial would, according to his order, set the broad arrow on the house of him that should refuse to give a satisfactory answer, and promises great protection on submission.

"Now I beseech your honors that you will, with what speed you can, urge his lieut. to consider our condition; how we lie between Sylla and Charibdis, not knowing how to get out of this labyrinth. I could not understand but that he doth intend to come up with a competent company to force us, who are not in a capacity to defend ourselves against the pagans, who doe grow very insolent, and tell us we are lyars, and that our great men care not for us, because that none of them come to us.

"I would gladly have waited on your honors, but cannot at present by reason of an extreme cold that hath seized on me. But because I would not have these miscarry, I have sent my friend by whom I shall expect your answer, to the satisfaction of all the inhabitants, who do much desire to serve his lordship faithfully, and live quietly under his protection and government, to enjoy what little goods they have in peace, and not have it macerated and torn from them because they are ignorant. Thus hoping you will think of us and provide for our safety that cannot help ourselves, I shall omit at present what further discourse I have heard until it shall please God that I shall see you and rest.

Your honors' ever faithful and ready servant,

JOHN ELZEY.

Manoakin this —th.

March 1662. (N. S. 1663, mark the same distinction in following dates.

I. D. JONES.)

139 *Col. Scarborough's Demand.*

"Mr. John Elzey:

"This day as I am his majesty's treasurer and substitute, I do demand of you obedience and acknowledgment to his majestie's dues in poynt of rights for lands and government, which though hitherto upon some reasonable pretence, you have declined. I have, upon better information, and doe by these presents, demand your immediate obedience to his sacred majesty in payment of right for land and gov'nt to which your answer and submission is required by me, his majesties officer, this 23d of February, 1662.

"E. S.

"Upon some delays and scruples made by Mr. John Elzey, I demand right of land in and upon the place where he lyreth, and submission to his majestie's government, being in a place now called Manrakin, formerly in Smith's Map, Wicomoco river.

"E. S."

Mr. Elzey's Answer.

"Mr. Scarborough.

"Honored Sir: Having perused your demand of obedience and acknowledgment to his majestie's dues in poynt of rights for government, I can give no other response than this. That I shall decline, as long as I live, all authority that shall not be derived from him, his heirs or lawful successors, and am, and shall always be ready, to yield obedience to them, that is or shall be the gov'nt by an authority granted from him, or any of his lawful successors, and will willingly pay all such rights and dues as shall be lawfully demanded of me, whether of right of and, or otherwise; and soe shall I subscribe this 23rd of February, 1662.

"J. E."

140 Upon reading of this letter it is ordered:

"That a letter bee sent to Sir Wm. Berkley, governor of Virginia, from the governor and council, signifying unto him Col. Scarborough's demand of obedience and acknowledgment to his majestie in poynt of rights of land, from the people inhabiting at Manoakin and Annamessex, as well as submission to his majestie's government of Virginia. And that on their part, they would appoynt a time, when we on our part, shall attend on them to determine that place which shall be accounted Watkins point according to his lordship's patent for Maryland."

The next historical document in the Md. Records, relating to this "difference" about "Watkins point," is the following, under date of June 3rd, 1664:

"Charles Calvert, Esq., Lieut., and Chief Governor of the Province of Maryland, under the Right Hon'ble Cecelius, Lord and Proprietary of the same: To all persons to whom these presents shall come, greeting:

"Whereas, divers persons, illwillers to the good correspondence of long time held between the Gov'm'nt of Virginia and that of this province, have of late endeavored to raise differences between the said governments, touching the ancient and known bounds between them on the Eastern shore; and whereas the Honorable Sir William Berkley, gov. of Virginia, did appoint Col. Edmond Scarborough, Mr. John Cattlett and Mr. Richard Lawrence, or any two of them, whereof the said Scarborough to be one, to give a meeting to the deputies or substitutes of this government, by the governor thereof to be appointed, (in case any dispute should arise where Watkins point was, that being the bound of this province,) to determine what should be reasonably proposed by the said Deputies. In pursuance whereof, the said Col. Scarborough, without the said
141 Cattlett or Lawrence, or convenient notice given to me, did, about the tenth day of October last, in a hostile manner, enter many miles into this province, to the terror of the people at Manrakin and Annamessick, beating, abusing and imprisoning the people there, by him long before seated by virtue of a commission from the government, and contrary to his certain knowledge of the bounds of the said province. And whereupon, remonstrance of this undue proceeding to the Honorable Sir. Wm. Berkley, by myself in person, he did not only disclaim any order from him to the said Scarborough alone, or before notice given and debate had, touching the point of difference, to proceed by force as he did, but was pleased further by his order of the 28th of March last, to order the said Scarborough, with one or both the surveyors, Cattlett or Lawrence aforesaid, Capt. Joseph Bridger, Capt. Rob't Elkson, and Mr. Bulwer Mitford, to give a meeting to such commissioners, as should by me be appointed at Manrakin 10th May last, and in case of my refusal of that so just a proposal, to proceed according as in that commission they were ordered. Now know ye, that for as much as neither the said John Cattlett, nor Richard Lawrence, appeared at Manrakin at the time appointed, without one of which nothing could be legally by the rest done that did appear; and to show how we are not to be tried out of our desires of fair correspondence with the hon'ble gov. and council of Virginia, I have constituted, ordained, appointed and impowered Philip Calvert, Esq., deputy lieutenant and chancellor of this province, to repair to the Hon. Sir. Wm. Berkley gov. of Virginia, and the council there, and after delivering of a duplicate of these presents, and to treat and determine the said difference concerning Watkins point; also to demand justice against the said Edmond Scarborough for entering into this province, in a hostile manner, in October last, and by blows and impris-
142 onment outraging the inhabitants of Manrakin and Annamessex, without commission, as also for attempting to mark a tree upon a point of land above thirty miles to the northward of Watkins point, in Maryland, without commission or order, and for publishing a proclamation at Manrakin, on Monday, 16th May, contrary to the order dated 28th of March aforesaid I having appointed commissioner the said Philip Calvert, and Jerome White, surveyor general, to meet at Manraken aforesaid, who did accordingly come

at the time and place appointed, which, unless I had refused to do, they, the said commissioners, had no order to publish any command or proclamation whatsoever, had they been present (according to the tenor of the same order,) as they were not. And further, to represent to Honorable Sir Wm. Berkley the undue proceedings of the assembly of Virginia, who undertake to take cognizance of things relating to this province and the people thereof. Whereas his majesty of happy memory by the charter, hath, by express words, exempted both the province and the people thereof from the government of Virginia, and made both it and them dependent only on the crowne of England; and to desire of him, the said Sir. Wm. Berkley, to take care for the future that the assembly, meddling with things relating to us, and beyond their power, be no cause of future difference between us; which we, in our assembly, on our part, shall industriously avoid. Whereof I desire that the said Philip Calvert may be credited and believed, promising to ratify and confirm whatsoever shall be done by him, according to this my commission, as if it were done by myself. Given at St. Maries, under my hand, and the lesser seal of this province of Maryland, this 3rd day of June, 1664."

We learn from this document the only connected account
143 of the proceedings of the governor and council of the two colonies, subsequent to that order of the 8th of April, 1663. It appears from this document, that in response to the representations made to Gov. Berkley, under the order of April 8th, 1663, he appointed Col. Scarborough, Mr. Cattlett and Mr. Lawrence, or any two of them, whereof Col. Scarborough to be one, to give a meeting to the deputies or substitutes of Maryland, in case any disputes should arise where Watkins point was, that being the bounds of this province. That Scarborough, without Cattlett or Lawrence, or notice to the governor of Maryland, invaded Maryland in a hostile manner about the 10th October, 1663. That remonstrance against "this undue proceeding" was made to Gov. Berkley by Gov. Calvert in person. That Gov. Berkley not only disclaimed any order from him to Scarborough alone, or before notice and debate had been touching the point in difference, but by order of 28th March, 1664, directed Scarborough, with one or both the surveyors, (Cattlett and Lawrence,) Capt. Bridger and the others named, to give a meeting to the Maryland commissioners on 10th May, 1664. That neither of the surveyors, Cattlett or Lawrence, appeared at the time appointed, although Philip Calvert and Jerome White, commissioners appointed by the governor of Maryland, met at the appointed time at Manrakin; but that Scarborough was there in May, 1664, and attempted to mark a tree upon a point of land above 30 miles North of Watkins point, and on 16th May, 1664, published at Manrakin, a proclamation, contrary to his orders. That by document of June 3rd, 1664, Philip Calvert was commissioned to repair to the governor and council of Virginia to deliver a duplicate of the paper, and "to treat and determine the said differences concerning Watkins point;" also to demand justice against the said Scarborough for invading this province with force of arms, outraging the inhabitants

of Manoakin and Annamessick, and for his other acts com-
144 plained of. And further to represent to Gov. Berkley, of Virginia, the undue proceedings of the assembly of Virginia, who had undertaken to take cognizance of things relating to this province, contrary to the express words of Lord Baltimore's charter."

The undue proceedings of the Virginia assembly here referred to, were doubtless the act of the 2nd September, 1663, entitled, "An Act concerning the bounds of this Colony on the Eastern shore."

By this act the assembly "concluded the same place of Watkins Point to be the North side of Wicocomico river on the Eastern shore, near unto, and on the South side of the straight "Limbo," opposite Patuxent, which place, according to Capt. John Smith, in the year 1608, was so named. The point here described has always been known and called Nanticoke point. It is highly probable that the assembly, as well as the "five able selected surveyors and two burgesses," on whose report the assembly based their action, was mainly, if not entirely, influenced by the opinion and representations of Col. Scarborough. He had been for many years a resident of the Eastern shore, and a member of the house of burgesses and was surveyor general of Virginia. He had commanded the Virginian forces on the Eastern shore in the wars against the Indians, and, doubtless, had traversed the country, and was better acquainted with the territory than any other person in the two colonies. But he had evidently read Smith's History and Map to little purpose, and had jumped to his conclusions with reckless audacity. This is shown by his demand upon Mr. Elzey on the ground that the place of his residence, at Manrakin, was formerly in Smith's Map called Wicocomico river.

We think we have already shown that a careful examina-
145 tion and comparison of Smith's History and Map, together, will leave no doubt that the only Wighco (or Wighcocomico river as it is called in the history) on the Eastern shore, mentioned by Smith, or of which he had any knowledge, is the present Pocomoke.

On the map, Smith has located the Indian king's house "Wighcocomico," on or near the South bank of the Wighco, and he has located no river between the Wighco and Cucarawack, (the Nantikoke,) although Little and Great Annamessick, Manrakin, and Wicomico rivers intervened between them. In the same way, he passed by, without discovering, the rivers Chester, Wye, St. Michaels, Great and Little Choptank, and the Black Water and Tansquaking rivers, between the Tockmough (the Sassafras) and the Nanticoke.

The error of the Virginia assembly, apart from its total want of jurisdiction over the question, is still more remarkable. We presume it originated in misapprehending a line on 183d page of i vol. Smith's History, viz: "Watkins, Reads and Munfords poynts, are on each side of Limbo." But this gives no certain idea of the location of any one of them. A glance at Smith's Map, however, shows that Mumfords point was North of Limbo, and must have been at the Southern end of Hoopers island, (though not known to Smith to be an island,) and that Watkins point was 30 miles South of Limbo, and

was the North point at the mouth of the Wighco flumen, as located on Smith's Map, while Reads point was further up, and on the same side of the Wighcocomico river, probably at the point now known as Williams point, below Shelltown. The claims founded on these errors were subsequently abandoned. Meantime the Maryland authorities continued to claims to Watkins point, as described in the charter, in every document which related to the bounds of the province on the Eastern shore. Thus, in a commission from Governor Calvert, dated 26th March, 1664, to Wm. Colebourn to be
146 lieutenant under Capt. Thorne of the foot company to be raised by him, "between Choptank river and a line drawn east into the mayne ocean from Watkins point, *being the North point of the bay into which the river Wighco, formerly called Wighcocomico, afterwards Pocomoke, and now Wighcocomico again, doth fall exclusively.*" Again, in a commission, dated 26th May, 1664, to Stephen Horsey, Capt. Wm. Thorne, and Wm. Bozman, to grant lands upon the Eastern shore of this province, in any place between Choptank river and a line drawn East into the main ocean from Watkins point, "*being the North point of the bay into which the river Wighco,* (formerly called Wighcocomico, afterwards Pocomoke, and now Wighcocomoco again) *doth fall exclusively.*" Liber H. H., folio 197, 198.

Again in a commission dated September 2d, 1665, to Capt. Wm. Thorne, to command as captain all the forces "on the Eastern shore of the province, from Wicocomoco, that joynes upon Maniy" (meaning Monie bay, into which it flows), "to that part of Pocomoke on the said Eastern shore that is or shall be inhabited within the province." A distinction here is clearly drawn between the river now called Wiconoico (then Wicocomico), emptying into Monie bay, and the Pocomoke or Wighcocomoco of Smith, which fell into the Chesapeake bay at Watkins point. And again in the letters patent of Cecelius, Lord Baltimore, erecting the county of Somerset, dated 22d August, 1666, he describes the bounds thus: "All that tract of land within our province of Maryland, bounded on the South with a line drawn from Watkins point being the North point of the bay, into which the river Wighco (formerly Wighcocomico and afterwards Pocomoke and now Wighcocomico again) doth fall exclusively to the ocean on the East, Nanticoke river on the North, and the sound of the Chesapeake bay on the West, H. H. folio
147 268. Recorded in full in the records of Somerset county in Liber B.

In the division of the county into hundreds, January 1667, Annamessex hundred is thus described: "Beginning at Watkins point, running to the mouth of Merumisco creek, up the Westermost side of the said creek to Merumsco dams, and from Watkins point to the North point of Annemessex river," &c.

The particularity in the description of the location of Watkins point in all the official documents of Maryland, in which it was named, after February, 1663, was doubtless caused by the attempt of Col. Scarborough at that time to create a doubt as to its true location. This was also the reason for calling the Pocomoke "Wighcocomoco *again.*"

That this was the true original location, and that Watkins point originally extended so far South as to be west of Onancock river, and that the proclamation of 4th October, 1638, was recognized by the people of both colonies as correctly describing the bounds of Maryland down to 1663, we think, may be fairly inferred from a passage in Col. Scarborough's account of his military expedition to Annamessex and Manrakin in October of that year. It was addressed to the governor and council of Virginia. Describing his interview with the settlers at Manrakin, Col. Scarborough says:

"Some of them also discoursed of the lord lieut. of Maryland's claim to Manrakin and all other places to Anancock, to which it was answered that *whilst the erroneous proclamation was uncontrolled that declares Anancock to be Maryland's Southern bounds, it might be so received, but since occasion made the government of Virginia not only reverse that proclamation, but also by this present act of assembly, ye certain bounds of Lord Baltimore's patent was declared,*
and if the lieutenant had aught to say, he was referred by the
148 act to persons and place. Therefore they need not trouble themselves therein, for the question appertained to higher powers, and above private mens' controverting, at which they were well satisfied, and desired protection of their persons and estates from any pretenders under the said lord, which, being assured them, they departed well satisfied." It would appear from Col. Scarborough's account that he deemed it nothing short of rebellion in Lord Baltimore's officers, and the people of Annamessick, to question the authority of an act of the "grand assembly" of Virginia, "not only to reverse that proclamation," but also to declare "the certain bounds of Lord Baltimore's patent."

The two depositions made on the 19th July, 1664, in the court of Northton, as to the location of Pocomoke river and Watkins point, a copy of which was submitted to us by the Virginia commissioners, have received respectful attention. That of Capt. Wm. Jones states that thirty-five or thirty-six years before that date he often sailed a trading with the Indians in the Chesapeake bay, and well knew the river of Pocomoke, "which lyeth to the Southward of a little point described in Capt. Smith's Map without a name, and is so far Southward as a man can see from the place described in Capt. Smith's Map for Watkins point, and that the said river Pocomoke was then so called, and no such name as the river Wighco, either at that time or in the memory of man before, was applied to the river Pocomoke, and that ever since the said river has been and is called by the name of Pocomoke river."

The other is the deposition of Edmund Scarborough, and the same Capt. "Will Jones" and six others, who state that they "have of long time heard of and known the river Pocomoke, and that the
said river hath been so called time out of mind, both by the
149 report of the Indians and knowledge of the subscribers, and to this day is so called, being a river on the Eastern shore of Chesapeake bay, in Virginia, lying to the Southward of a small spiral point on the south side of Annamessick, and that point is to the Southward of the place described in Capt. Smith's Map 'for Wat-

kins point,' so far as a man can see in a clear day, and that the said river of Pocomoke, and so situate as aforesaid, is so called to this day."

We understand the first deposition to state, in substance, that the deponent knew the Pocomoke river about 1627 or 1628; that it (the river) is so far southward of a little point on Capt. Smith's Map without a name, as a man can see from the place described for Watkins point in Smith's Map, and that no such name as the Wighco, either then or in the memory of man before, was applied to the river Pocomoke. Capt. Jones, of course, could only testify to what he had heard or known. His knowledge began some twenty years after Capt. Smith's exploration; and against Capt. Jones' statement that the river never was called Wighco in the memory of man, are the history and map of Capt. Smith, published first in 1612, and again in 1629, calling that river "Wighco flu" (flumen) although Capt. Jones and the other deponents had never *heard* it so called, but only had *heard* it called Pocomoke in their day.

The second deposition, as written, does not seem reconcileable with the first. The first described the location of the *Pocomoke* as so far South of a small point without a name in Smith's Map as a man can see from Watkins point. In other words, that the small point was so far *North* of the river Pocomoke as a man could see from Watkins point. The second deposition states that the river Pocomoke lies to the Southward of a small spiral point on the South side of Annamessick, and *that point* is to the *southward* of the place described in Smith's Map for Watkins point.

150 If both depositions refer to the same point "without a name" in Smith's Map, and that point was on the South side of Annamessick river, it certainly must have been north of Watkins point, as located on Smith's Map.

We think the depositions utterly fail to rebut the evidence herein adduced as to the identity of the Wighco and Pocomoke, and the true location of Watkins point. And we conclude, with Bozman, that "Watkins point must have been the Southern promontory of Somerset county, on the bay, and what may be termed the exterior cape of Pocomoke bay." Bozman's Maryland, 132.

And we are further of opinion that that Southern promontory was subsequently to the charter broken by the action of the water into the islands called Foxs islands and Watts islands; and that "the most Southern promontory, or exterior cape of Pocomoke bay," since called Watts island, was formerly *Watkins point*, described in Lord Baltimore's charter.

Where the point of land at the Southern end of the promontory actually extended at the date of the charter, two hundred and thirty years ago, can only now be ascertained with probable certainty. From the shape of the shoal South of Watts island, as shown by the United States coast survey, the extent of the washing away may be inferred; but we submit that the Virginia Proclamation of 1638 furnishes, by implication, the most certain evidence of its former true location. An East line to the ocean from that point was Maryland's true Southern boundary on the Eastern shore.

We proceed now to consider

"The Calvert-Scarborough Line."

We have found no other reference in the Maryland records to the disputed Southern boundary on the Eastern shore, after Gov-
151 ernor Charles Calvert's letter or commission to Philip Calvert of the 5d of June, 1664, except what has already been stated.

The next entry on the Maryland records relating to this subject is entitled:

"A List of Lands Surveyed and Entered in the Office of Virginia, and Patented, that Now Fall in Maryland."

	Acres.	
Robert Hinston,	500	
John Williams,	400	
James Henderson, } These have their patents.		
Thomas Davis,		
John Davis,		
	Acres.	
Pte. of Edmond Scarborough	3000	Patented.
Capt. Bowman and Mr. Littleton	3,000	Past the office.
Lt. Col. Waters and Mr. Robins	4,000	Past the office.
Thos. Burnell	550	Past the office.
Edward Smaller	500	Patented.
Daniel Selby	600	Patented.
John Pike	400	Patented.
Robinson's children } Thomas Richard }	1,050	Past the office.
John Paramore	1,500	Patented.
Robert Johnson	600	Patented.
Stephen Barnes	600	Patented.
William Brittingham	700	Past the office.
Thomas Smith	400	Past.
Henry Bishop	2,300	Past.
Thomas Selby	1,250	Past.
Alexander Williams	600	Past.
Robt. Richardson	2,000	Past.
152 Edward Smith	700	Past.
Richard Smith	200	Past.
Frances Benston's formerly John Wallop's } to produce.		
Edmond Scarborough	3,000	

"Whereas the lands belonging to the persons above mentioned are found, since the lines are laid out on the Eastern shore, in Somerset county, to be within this province of Maryland, I do

hereby promise to ratify and confirm, by virtue of his lordship's instructions, to me directed, every of the said lands, by patent or grant, under the great seal of this province, to each respective person, when demanded within seven years' time, allowed each person for the making good their rights for every of the said lands so by them first surveyed on Virginia part and now to be holden by his lordship's grant, within this province, at 50 acres for every right of land, so by them to be made good according to his lordship's conditions of plantations.

"Given under my hand this 11th day of June, 1668.

"CHARLES CALVERT."

From extracts taken from the books of Virginia lands patents in possession of the Virginia boundary commissioners at the joint meeting at Crisfield, those lands appear to have been patented mostly in 1664, 1665 and 1666. These extracts enable us to supply the number of acres left blank in the "list" viz: James Henderson, 400 acres, Thos. Davis, 400; John Davis, 700—all patented April, 1666. John Wallop, 400 acres on Pocomoke river, and 3,050 acres at Gingoteague, 10th June, 1664; which, added to the above number of acres in the "list," make nearly 33,000 acres taken up by Col. Scarborough and his friends within the limits of
153 Maryland, according to the lines of 1668—pending the controversy as to the true location of Watkins point. It will be found on examining the Virginia records that all these lands were situated between the southeast bank of the Pokomoke river and the ocean, in what is now Worcester county, Maryland.

The following is a copy of the two agreements between Calvert and Scarborough of June 25th, 1668, as contained in the Maryland council book, 1669 to 1673, viz:

"Articles of agreement between Philip Calvert, Esq., chancellor of Maryland, deputed by the honorable the governor of the said province, to treat and conclude upon the bounds of the said province, and Colonel Edmond Scarborough, his majesty, surveyor-general of Virginia, authorized and commanded to lay out the bounds of Virginia."

I. *Imprimis.* It is agreed that all persons who have surveyed or patented and seated land on the seaboard side in the right of Virginia and now fallen within the divisional line, shall enjoy their said lands, they taking a patent from the lord proprietary of Maryland, and within seven years entering rights in the said province, and paying the half fees to the surveyor-general and full fees to the secretary and chancellor.

II Item. All such as have already patented any lands in right of Virginia in any other place within the line aforesaid, which is not also patented in Maryland, shall have the privilege in the foregoing articles upon such terms as in the said article is expressed.

III Item. All such who have patented and seated lands in right of Virginia, which do fall within the line aforesaid, and are pat-

ented likewise in Maryland, but not seated in the same right, shall enjoy the same, unless it can be proved they have seated said lands in defiance and despite of the said government after warning
154 given, provided they take patents, enter rights and pay *fees* as in the first articles is agreed.

IV. Item. If any land shall chance to be patented only in right of Virginia, for which there is also a patent in Maryland, the patent in Maryland shall carry the land. In witness whereof the said Philip Calvert and Edmond Scarborough have hereunto set their hands, the 25th day of June, 1668.

(Signed) PHILIP CALVERT,
EDMOND SCARBOROUGH.

"Whereas his royal majestie's commission to the surveyor general of Virginia commands setting out the bounds of Virginia, with a reference to his majestie's hon'ble governor and council of Virginia, from time to time to give advice and order for directing the said surveyor general to do his duty appertaining to his office. In order thereunto his majesty's hon'ble governor and council have by letter moved the hon'ble, the Lord Baltimore's lieut. gen'l of Maryland, to appoint some fitting person to meet upon the place called Watkins point, with the surveyor general of Virginia, and thence to run the divisional line to the ocean, sea, &c.

"The Hon'ble Philip Calvert, Esq., Chancellor of Maryland, being fully empowered by the hon. lieut. general of Maryland, and Edmund Scarborough, his majesty's surveyor general of Virginia, after a full and perfect view taken of the point of land made by the North side of Pocomoke bay and the South side of Annamessex bay, have and do conclude the same to be Watkins point, from which said point, so called, we have run an East line agreeable with the extrêmest part of the Westermost angle of said Watkins point over Pocomoke river to the land near Rob't Holston's, and there have marked certain trees, which are so continued by an East line running over Swarsecutt's creek into the marsh of the seaside,
155 with apparent marks and boundaries, which by our mutual agreement, according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay.

"In confirmation of which occurrence have set our hands and seals, this 25th day of June, 1668.

(Signed) PHILIP CALVERT. [SEAL.]
EDMUND SCARBOROUGH. [SEAL.]

This is the only record of the transactions found in the Maryland archives. No journal of proceedings, no map or plat, no notes of certificate of survey, no mention of the names of the surveyors employed in running the line, can be found in our records.

Sixty years had elapsed since Capt. Smith and his crew named Watkins point, and thirty-six years since Charles I. had adopted that point as the spot from which the divisional line on the Eastern shore between Virginia and Maryland should be run to the ocean.

A controversy had for several years existed as to the true location of this point. The surveyor general of Virginia and the chancellor of Maryland were empowered to meet upon the place and thence to run an East line to the ocean. They concluded that "the point of land made by the North side of Pocomoke bay and the South side of Annamessick bay was Watkins point." If Lieut. Michler was correct in 1858 in assuming that "the mouth of the big Annamessick river, "may once have given rise to the name Annamessick bay," mentioned in the Calvert and Scarborough agreement, and our conclusion is correct that in 1668 the neck of land since broken up into Foxs and Watts islands extended unbroken to a point West or nearly West of Onancock river, then "the place called Watkins point" must have extended nearly twenty miles from North to South.
156 Michler would hardly have come to such conclusion but that the prolongation Westward of the Calvert-Scarborough line from Pocomoke river to Tangier sound reached the sound after crossing little Annamessex river and North of the mouth of that river. He would scarcely have supposed that a point made by the North side of the Pocomoke bay would have extended beyond the mouth of the next river to the mouth of Pocomoke, especially as he, by a mistake, supposes the neck of land known as "little Annamessex" to extend to the big Annamessex river. It is well known that the "little Annamessex neck," extends only from the Southeast shore of little Annamessex river to Cedar Straits, and along the North shore of Pocomoke bay to East Creek, and that the neck of land between little and big Annamessex is known as "Annamessex neck." If Watkins point was formed by Pocomoke bay on the south and East, and Tangier sound on the West, no geographical definition of a "promontory" would carry its northern limits beyond the mouth of the little Annamessick river. The words "promontory," "headland," "place," and "point" which are all used in the charter to indicate the spot or point of departure of the divisional line to the ocean, are commonly understood to describe a tract of land extending out into a bay or river beyond the line of the shore and becoming narrow at the end, which is therefore usually called "the point," and is always understood to mean "the extremest point" of the "angle," where the word "point" is used to indicate boundary. Thus, when the bounds of St. Mary's county were particularly prescribed by the act of 1695, ch. 13, confirmed and made perpetual by ch. 92 of 1704, it was declared "that St. Mary's county shall begin at Point Lookout and extend up Potomac river," &c., who would suppose that by "Point Lookout" in these acts was meant "the point of land made by the North side of "Potomac river and the "South side" of Patuxent river?—a tract of land which in-
157 cludes seven or eight other distinct points. So also in the letters patent of 1666 erecting Somerset county "bounded on the South within a line drawn *east from Watkins point*, being the North point of the bay," &c., and in describing the bounds of Somerset and erecting Worcester county by the act of 1742, ch. 19, "beginning at *Watkins point*, and *thence* running up Pocomoke bay," &c. It would seem impossible to doubt that in all these descriptions the

end of the point where it was washed by the water into which it was extended was meant as the point of departure. But the Calvert-Scarborough agreement concluded otherwise.

"After a full and perfect *view* taken of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay, have and do conclude the same to be Watkins point." It is not stated that any other evidence, traditionary or otherwise, had aided their *view* or conclusion. A point of land of such extent from North to South must have some limits from East to West. These are not expressly given, but evidently must have been, Tangier sound on the West and Pocomoke river on the east; a distance of about 15 miles apart.

Their commission, "to meet upon the place called Watkins point," of course empowered them to determine what and where was the "place." This they did, as their report certifies. Their next duty was "thence to run the divisional line to the ocean, sea, &c." This also they certify they did, to wit, "*from which said point,* so called," (that is *from* the point of land made by the North side of Pocomoke bay and South side of Annamessex bay,) "we run an East line agreeable with the extremest part of the westermost angle of the said Watkins point, over Pocomoke river, to the land near Robert Holston's, *and there have marked certain trees,* which are so continued by an East line running over Swansecute's creek, into the marsh of the sea side, with apparent marks and boundaries,
158 which, by our mutual agreement, according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay."

We think there is internal evidence that this agreement was drawn up by Col. Scarborough. We suppose Chancellor Calvert was instructed to agree to the best attainable line. We will give the reasons for this opinion hereafter. It is manifest that the attempt of Col. Scarborough and the Virginians to establish the location of Watkins point, at the Manokin and Wicomico rivers, had utterly failed and been abandoned. It has been shown that the Virginia grants, between the Pocomoke river and the ocean, had extended far North of Watkins point, as claimed by Lord Baltimore. It has not been, and we confidently assert that it cannot be shown that Virginia ever granted a foot of land North or West of the Pocomoke bay and river, and East of Tangier sound, except Foxs and Watts islands, which were granted long after the Calvert and Scarborough line was run. Col. Scarborough's invasion and "undue proceedings" at Annamessex and Manokin in October, 1663, were utterly repudiated and disclaimed by the governor and council of Virginia; and from that time to this every foot of land North of Cedar straits and Pocomoke bay and river, and East of Tangier sound, has been claimed and held under Maryland grants and governed by Maryland laws, as part of Somerset county.

When Col. Scarborough made his expedition to Annamessex, in October, 1663, he states that he found Stephen Horsey settled upon lands granted by, and holding a commission as justice of the peace

from Lord Baltimore, and strenuously, in the presence of the Colonel and his forty armed horsemen, he refused to recognize the authority of the Virginia government. It is evident that the line, if ever run at all, had been run across this very land of Horsey's, as if intended as a divisional line, had left a part of it in Virginia. This
159 is shown by the prolongation Westward by Michler in 1858, crossing this identical land then owned and occupied by descendants of Stephen Horsey, the original patentee. The prolonged line crossed other lands in the same predicament, in its entire course from the right bank of the Pocomoke river to Tangier sound. Other lands also South of that line, and between it and Pocomoke bay and river, had been granted by Maryland before 1668, and certainly if Virginia had intended to claim jurisdiction over the territory South of the line, and North of Pocomoke bay, similar and reciprocal provisions to obtain grants from Virginia, to confirm the title of the settlers, would have been included in the articles of agreement. But the articles of agreement relate only to the Virginia grants lying to the North of the divisional line between the Pocomoke river and the ocean. The land owners, under Virginia titles North of that line had been ascertained by running the line to the ocean. A list of them had been made and submitted to Governor Calvert, and his written promise, under instructions from Lord Baltimore, to confirm their title by grants from his lordship, had been obtained on the 11th day of June, 1668, fourteen days before the articles of agreement for quieting possession were signed by Calvert and Scarborough. The articles consist of four items. 1st. Lands on the seaboard surveyed or patented and seated in right of Virginia, and now fallen within the divisional line to Maryland; 2nd. Lands patented by Virginia in any other place, within the said line, and not also patented in Maryland; 3rd. Lands patented and *seated* in right of Virginia within the said line, and patented likewise in Maryland, but not *seated* under said patents, unless the lands have been *seated* in defiance of the Maryland government, after warning given. All these were to enjoy their lands, upon taking a patent from the
160 proprietary of Maryland. 4th. Land *patented* only in right of Virginia, for which also there is a patent in Maryland, the Maryland patent shall carry the land.

There is not the slightest intimation in these articles, that Maryland had granted any land which, by the running of the divisional line, had fallen within the jurisdiction of Virginia. And not only were Horsey and others left in the undisputed and undisturbed possession and enjoyment of all their lands already granted by Lord Baltimore, but all of the remaining unpatented lands South of the prolonged line upon the North side of the Pocomoke river and bay, down to Cedar straits and Tangier sound, were, after 1668, granted by Lord Baltimore, and have been occupied and governed as Maryland territory, in as full, free and unquestioned manner as any other lands within the admitted limits of the charter. And the records of Somerset county show the transmission of title from the patentees, by deeds, wills, descent and judicial sales, down to the present

owners. It was but natural, under the circumstances, that Col. Scarborough should desire to fix the line between Pocomoke river and the ocean, as far North as possible, so as to keep their lands, for which they had obtained grants from Virginia, under the Virginia jurisdiction. If he could have shown that "the extremest part of the Westermost angle" of the point made by the Big and Little Annamessix rivers, was the Watkins point of the charter, then there could have been no doubt that the divisional line must have run thence by the shortest line to the ocean. But this was impossible. Hence the necessity to make Watkins point cover a very large extent of country. After having agreed upon its limits, it became necessary to fix the point of departure *from* the point so described and "so called", to the ocean.

That point of departure must be from the termination of Watkins point, on the Pocomoke river, because the preposition "from"
161 is exclusive. If the Pocomoke river was not the Eastern bound of Watkins point, as described in the agreement, where was the Eastern bound? Big Annamessick river or bay was on the North; Pocomoke bay on the South, and certainly the sound (then sometimes called Nanticoke sound, but since known as Tangier sound,) was its Western bound. Then where, but at the Pocomoke river, was its Eastern bound?

To ascertain the point of departure on the Pocomoke river towards the ocean, they state "we have run an East line (not *from* but) agreeable with (that is to say, corresponding with, or in the direction of,) the extremest part of the Westermost angle of the said Watkins point, over Pocomoke river, to the land near Robert Holston's." The theory upon which they had agreed left them no alternative. They were to run the line East, *from* Watkins point, and not across it. If they agreed upon such a theory as to what was Watkins point, they must abide by its logical results. Having fixed its Northern, Southern and Western limits on Tangier sound, they could not be certain how far North, within these limits, they could start for the ocean, on and from the Pocomoke river, without first having ascertained it in some mode, by fixing upon a point on the sound, within those limits, with which the line over the Pocomoke river to the ocean should be "agreeable" or correspond. If any line was actually run from a point on Tangier sound to the right shore of the Pocomoke river, we can conceive of no other purpose of such a line consistently with their report and existing facts, than to ascertain the spot of departure on that river towards the ocean. If such line was ever run from the Westermost angle of Jones island, it traversed a space of more than 15 miles from sound to river; crossing in its course Little Annamessick river, Ape's Hole creek, East creek, and Merumsco creek; and the whole line, except where it crossed
162 creeks and marsh, at that time was probably thickly set with large trees. It is impossible to conceive an adequate reason why, if the line was run as part of a permanent boundary line between Maryland and Virginia, they should not "have marked certain trees" at the beginning, and "so continued with apparent marks and

boundaries" to the Pocomoke river. That they did not do this, their report most clearly implies. And hence McDonald and Lee, commissioners in 1858 and their first instructions to Lieut. Michler to trace the line in question, state: "It is supposed that there is still standing some old marks of the Scarborough line", and add, "It is inferred from documents in possession of the commissioners, that the commission of 1668, *did not mark the line West of the Pocomoke river,* and *that in all probability you will find no marks to guide you.* And after Michler had run the prolonged line Westward from the Pocomoke river to the sound, at Janes island, he reported that "No boundary line marks of any kind were found West of the Pocomoke, and the inhabitants professed to be in ignorance of the existence of any." The same result attended the inquiries of the present commission after the most diligent and thorough examination on oath, of many of the oldest and most intelligent citizens now residing on, and in the vicinity of the prolonged line. Again, if the line from "the extremest part of the Westernmost angle" was to be the boundary from the sound to the Pocomoke river, there was certainly as much necessity of marking the beginning on or near the sound, where the land was washing away, as there was for marking the beginning of the line Eastward at and from the crossing of the Pocomoke river. The "Westernmost angle" must have been the "point without a name", laid down on Smith's Map, and described in the depositions of Capt. Will. Jones, Col. Scarborough and others, made in 1664, apparently for the purpose of indicating that point as the true Watkins
163 point. That "point without a name on Smith's Map", must have been situated between the mouths of the Little and the Big Annamessick rivers. It was the only point of high land on the main line for 20 or 30 miles Northward, after leaving the neck of high land, at the mouth of the Pocomoke river or bay. The rest of the country was low, broken marshes. That point of land afterwards became known as Janes island. In 1668 it must have extended, perhaps, three or four miles from the present shore line, Southwesterly into the sound. It has since been entirely washed away, leaving but a narrow, sandy beach, between the sound and an extensive marsh. But a long, narrow shoal, reaching far out into the sound, and the Southwesterly direction of the sound channel, the waters being forced there by the high land on the main, indicate its former locality.

Living witnesses testified before the commissioners their recollection of it when the end was a high clay bank some 12 to 15 feet above the water, and when wheat was grown upon it. There are traditions of a peach orchard near or on the spot where the light-boat was formerly anchored, considerable farther out from the shore than the present light-house on that shoal. Michler, in his report in 1858, stated that "although the angle of this point is even at this day the most Western one, still many years ago the land made out into the sound, a much greater distance. Janes island is said by Capt. John Nelson, aged seventy-two years, to have extended, within

his recollection, to the present position of the light-ship, now anchored about a mile and a half from the present shore line.

It must have been evident to Calvert and Scarborough in 1668 that all the points of land upon that shore were constantly and rapidly washing away by the action of the wind and waters—hence the necessity of some marks upon the land near by not liable to
164 such change. But there being no such marks found, and no record or tradition of any, the location of the "Westermost angle," has become impossible of any certain identification, notwithstanding Michler's supposition that the anchorage of the light-ship was very near the initial point of the Scarborough line. But no such result has attended the boundary line on the east of the Pocomoke. Upon reaching "the land over the Pocomoke river near Robert Holston's," they "there marked certain trees, which are so continued by an East line, &c., to the sea side," with apparent marks and boundaries, which, by our mutual agreement according to the qualifications aforesaid, are to be received as the bounds of Maryland and Virginia. Michler's report stated that "Along the whole length of the line between Cingoteague bay and the Pocomoke river, a distance of between eighteen and nineteen miles, there were existing of such marks, at the time of the survey in 1858, thirty trees, one gate—the site of the ruins of an old house standing at the time the Scarborough line was run—two state roads located on the line measuring nearly ten thousand eight hundred feet, making in all one mark for every half mile."

We submit that these facts are utterly irreconcileable with the idea that a continuous land line of fifteen miles from the sound to the Pocomoke river was ever run and intended to be considered as a "divisional line between Virginia and Maryland," and that the East line of "marked trees," and of other "apparent marks and boundaries" from the Pocomoke river to the seaside was the only divisional line *run* from the Watkins point, "so called," and so agreed upon, "as the bounds of Virginia and Maryland"; thus leaving the whole of Watkins point, as described and agreed upon by them within the limits of Maryland, as the evident meaning of the charter required.

The charter line, as we have seen, called for "a right line
165 drawn from Watkins point on the West unto the main ocean on the East". "So that the whole tract of land, divided by the line aforesaid, between the main ocean and Watkins point unto the promontory called Cape Charles may entirely remain forever excepted to us, our heirs and successors."

The theory of the Calvert-Scarborough line leaves the water line of the Pocomoke river and bay to follow the Watkins point, "so called", in their agreement, to the Chesapeake bay as the divisional line separating Virginia and Maryland westwardly from the land near Robert Holston's, on which stood the "certain marked trees."

It has been already remarked that the theory that Janes island was the westermost angle of the Watkins point described in the agreement, is based solely upon the fact that the prolongation Westward of the marked line reached Tangier sound at Janes island.

In point of *fact* it was not the most Western angle. All the indi-

cations, as well as tradition, show that the most Western angle was at the Northern end of the neck of land which we suppose at that time to have extended from Annamessick marsh to nearly West of Onancock river, which Northern end subsequently became Fox island. Within the memory of living witnesses the Northwestern angle of that island extended far out into the sound, and was heavily wooded with large pines. The stumps still remain far out in the water. This fact, especially when considered in connection with the traditions from old Mr. Nelson (the father of the John Nelson mentioned by Michler), that he had always heard that the divisional line between Virginia and Maryland crossed the North end of Fox island, would have indicated that place as the "Westermost angle" of the land afterwards formed into Fox island would have passed over the water of Pocomoke bay for some twelve miles or more, and
166 thus being a water line, it was of course impracticable to indicate its locality by "apparent marks and boundaries." And this line, according to the location of Pocomoke bay and river on Smith's Map, probably reached the East shore of the river, "near the land of Robert Holston," as mentioned in the agreement. The waters of Tangier sound and Cedar straits now cover the locality of that Northwestern angle.

It is not, we think, difficult to show by Smith's History and Map that the "point without a name" on the map between what are since known as the mouths of Big and Little Annamessex rivers, was a totally different point from Watkins point, which is located and named on the map. In Dr. Russel's account of the exploring expedition up the Eastern shore (*i* Smith's Hist. p. 174), it is stated that after leaving the river Wighcocomico and having passed Russel's (now Tangier) islands, "falling with a high land upon the main, found a great pond of fresh water, but so exceeding hot we supposed it some bath; that place we called Point Ployer, in honor of that most honorable house of Monsay, in Brittaine, that in an extreme extremity once relieved our Capitaine. From Wighcocomico to this place all the coast is low, broken isles of morass, grown a mile or two in breadth and ten or twelve in length, good to cut for hay in the summer and to catch fish and fowl in winter; but the land beyond them is all covered over with wood, as is the rest of the country."

The mouth of the Wighcocomico or Pocomoke then was, as it now is, south of what is now known as Watts island. Thence going North you pass Tangier islands, then (including Fishbone and Herne islands) extending as far North as Fox island is now. From the mouth of the Pocomoke to Point Ployer at that time (1608) the coast was low broken isles of marsh. And from Cedar straits to Janes island such is now the character of the coast. There
167 may then have been (in 1608), and for thirty years thereafter, an unbroken neck of land, as we have supposed, flanked on the East and West by low, broken islands of marsh, which have long since been washed away, and some of them have become submerged within the memory of living witnesses. Smith's Map indicates many islands in that vicinity which no longer are seen. The

distance of ten or twelve miles from the mouth of the Pocomoke river North would about reach the place indicated by Janes island bar, as formerly occupied by Point Ployer. There is no tradition, so far as we can learn, of "a great pond of fresh water so exceeding hot" as is described by Dr. Russel. It was probably near the shore where they landed, and must have been occasioned by a subterranean boiling spring. Before the settlement of Europeans in that vicinity, the point containing this great pond of hot fresh water was doubtless washed away, or else probably some tradition of such a natural curiosity in such a locality would have been handed down from one generation to another. There is a place in the sound described as being not far from the end of the bar, and North of the present Janes island light-house, called "Puffy hole." Tradition says that at that place, for the space of a hundred yards around, the water was always in commotion, as if boiling up from the bottom, even in a perfect calm, and when other waters around it were still, and that formerly there were no soundings. It is said that this spot was often visited by the British officers during their occupation of Tangier island in the war of 1812, and that on one occasion they ran out ratline enough to fill a hogshead without finding bottom. The map of the United States coast shows that near the Northwest end of the bar there is a sounding at the depth of fourteen and a half fathoms,
with soundings rapidly shoaling on the South to nine, and on
168 the East and West to six fathoms and less. But the locality of Point Ployer is shown further by the mention in the account of Smith's second expedition of Watkins, Reads and Monfords points being on each side of Limbo. Smith's Map shows the location of each of these places: the straits of Limbo (now Hoopers straits), with Monfords point, to the North of them, and Watkins and Reads points to the South on the Pocomoke river.

After the above description of Poynt Ployer by Dr. Russel, his account proceeds: "Being thus refreshed in crossing over from the main to other isles," they were in great danger of being lost in a terrible storm. They were forced by ill weather to remain two days on these uninhabited islands, which they called Limbo. Thence sailing for the main they fell in with the river Cuscarawaock (the Nantikoke), thence they "passed by the straits of Limbo for the Western shore." The isles they called Limbo were evidently those now known as Smith islands and Holland islands. And the only point of high land "upon the main" from Russels (Tangier) isles to Nanticoke river was that since known as Janes island, which must have been the Point Ployer of Smith's History.

It was therefore a mistake to suppose that that point was ever any part of the Watkins point of Lord Baltimore's charter.

Another mistake was the course of the line, a mistake which was not discovered until 1858, when the line was traced by Michler. Instead of finding it an East line as called for in the agreement, he found it 5°, 15″ North of East. This error, Michler supposes, was occasioned by running the line by compass, without allowing for the variations of the needle, which he found to have been about 5° 15″ in 1668.

The mistake in running the line from the Pocomoke river
169 to the ocean without allowing for the variation of the needle, gave Virginia twenty-three square miles (14,720 acres) of Maryland territory in the Northern part of Accomack county.

But the agreement, whatever may be its true construction, was acquiesced in by Charles II. and Lord Baltimore, who were the principals in the controversy. We have shown the practical construction of the agreement by Lord Baltimore in continuing to hold and grant all the lands North and West of the Pocomoke river and sound and Cedar straits. In the absence of any evidence to the contrary, we submit that Charles II. and his governor and council of Virginia acquiesced in that construction, and if that construction was not the true one, Col. Scarborough, at least, would have been found remonstrating against it. Doubtless Scarborough was entirely satisfied with the result of his negotiation. Lord Baltimore had been required to abandon the valuable and extensive territory between Onancock river and the divisional line, which Scarborough so carefully designated by "marked trees" and other "apparent boundaries." There were many weighty reasons constraining Lord Baltimore to adjust his controversy upon the best attainable terms. His charter had narrowly escaped the ordeal of the parliamentary and Cromwellian revolutions. And he was well aware of other controversies threatening still more important portions of his territory. It was necessary to conciliate the Virginians and to end the controversy with the agents of his sovereign. He was well aware that Charles II., whilst in exile, in the year after his father's death on the scaffold, had granted the "Northern Neck" to Lord Hopton and others, and, as stated in Col. McDonald's report, including "the rivers Potomac and Rappahannock, and all the islands within their banks"; and that after his restoration to the throne, in a letter dated 1663, just at the time when Scarborough raised the question as to the true
170 location of Watkins point, the king had referred to his grant to Lord Hopton as embracing "all the land lying between the rivers Potomac and Rappahannock and Chesapeake bay, together with the rivers themselves and all the islands within the banks of said rivers," thus coming in direct conflict with the charter of Maryland upon the line of Potomac. In addition to this, Lord Baltimore knew the immediate danger to his territory on the Delaware bay. Charles II. had, in 1664, granted a patent to his brother James, Duke of York, for sundry tracts of land in America, including all the land from the west side of Connecticut river to the East side of Delaware bay, and had sent naval and land forces, whereby the Swedes and Dutch were compelled to submit to his majesty, and the Delaware territory was placed under the rule of the Duke of York. Thus it remained in 1668, when Scarborough and Calvert met to determine "the place that should be accounted" Watkins point.

In this situation, Lord Baltimore was compelled to yeild to Scarborough's demands. This he did, probably, also, in the hope thereby to strengthen his position in regard to the impending controversies as to the Delaware territory and the Northern Neck. It was doubtless to this yielding of the territory in Accomack, between Onancock

river and the divisional line, that Philip Calvert referred in his remarks to Wm. Penn during the interview between the lord proprietary, Charles Calvert, and Penn, at West river, in December, 1683. Penn had, in 1681, obtained from Chas. II. a charter for Pa. In 1682, he obtained a release from the Duke of York of his claim to Pennsylvania, and also grants of the three lower counties of Delaware. Thus fortified, and with a letter to Lord Baltimore from the king, he went to West river to adjust the boundaries of the two provinces. In his report of the interview to the lords' committee of plantations, he states: "The first thing I did was to present
171 the king's letter, which consisted of two parts,—one, that the Lord Baltimore had but two degrees, and the other that he should admeasure his said degrees at 60 miles to a degree. This being read by him first privately, then publicly, he told me the king was greatly mistaken, and that he would not leave his patent to follow the king's letter, nor could a letter void his patent, and by that he would stand. This was the substance of what he said from first to last during the whole conference. To this I answered, the king might be misinformed rather than mistaken, and that I was afraid the mistake would fall on his side, for though his patent begins at Watkins point, and goes to the 40° of North latitude, yet it presumed that to lie in the 38°, else Virginia would be wronged, which should extend to that degree, &c.

To this his uncle and chancellor returned that to convince me his father's grant was not by degrees, he had more of Virginia given him, but, being planted, and the grant intending only land not planted or possessed, but of savage nations, he left it out, that it might not forfeit the rest."

Penn certainly misunderstood Chancellor Calvert's remark. The only places within the charter limits ever claimed to have been settled by Virginians before the date of the charter, were Kent and Palmers islands; and they were not "left out," but were awarded to Lord Cecelius Calvert, as covered by his charter.

Chancellor Calvert's allusion was, doubtless, to the fact that the charter of Maryland covered "more of Virginia" on the Eastern shore, in Accomack, than Lord Baltimore then claimed, but being settled by Virginians in 1668, "he left it out" by the Calvert-Scarborough agreement. It is inferred from a letter from Col. Scarborough to the governor of Maryland, relating to his intended expedition against the Apateague Indians, dated "From Onanaock, August 28th, 1659," that settlement had already been made at that
172 place. And as before 1668 Virginia grants had been made far beyond the "divisional line" agreed upon, it is highly probable that the Virginians were in the actual occupancy of most of the lands between Onancock and the divisional line when Calvert and Scarborough met. Penn was probably not aware of the circumstances, and hence did not comprehend the scope of the remark. There is no mention whatever of any line of latitudes in the "agreement" of 1668, because there was none in the charter. The "divisional line" agreed upon from the Pocomoke to the ocean, *happened* to be on or near the 38th parallel as then laid down upon the maps before, and at that time existing; and perhaps from this coincidence arose the mistake of the king and Wm. Penn. But that

the Southern end of Watkins point was understood to extend below the 38th parallel, and to be wholly included within the limits of Somerset county, as described in the act of Maryland assembly of 1742, before cited, is clearly shown by an ancient map found among the papers of Josiah Bayley, for many years attorney general of Maryland, and for which we are indebted to his son Dr. Bayley, of Cambridge, Maryland. The map is inscribed, "To the American Philosophical Society." This map of the peninsula, between Delaware and Chesapeake bays, with the said bays and shores adjacent, drawn from the most accurate surveys, is inscribed, "by John Churchman." It is without date, but was made before 1776, because it has the name of "West New Jersey," and after 1742 because it has Worcester county delineated upon it, as separated from Somerset, by the act of 1742. It is upon the largest scale of any ancient map we have seen, and altogether the most accurate, except that it is singularly erroneous in the location of Tangier and Watts islands. The 38th parallel of latitude on this map crosses the Chesapeake at the Southern shore of Potomac river, a little North of Smiths point;
crosses an island, we suppose to have been intended for
173 Smith's island; crosses a peninsula called Watkins point
near its Southwestern end; crosses Pocomoke bay and an island in it, at Ratcliffe point; and crosses the Peninsula to the ocean, upon the divisional line as located on this map, between Worcester and Accomack counties. Bozman says, truly, that Russels isles, on Smith's Map, "were the largest cluster within the bay." He remarks upon the extraordinary circumstance, that in the latest and best maps of Maryland and Virginia at that day, (1811,) a disagreement occurs in the denomination given in these lowest islands. In Griffith's Map of Maryland, published in 1794, they are called Tangier islands; but in that of Virginia, published by Bishop Madison in 1807, these same islands are denominated "Watts islands," and they are so called in the old Churchman map before mentioned.

Lord Baltimore persistently refused to ascertain his Northern bounds by measuring two degrees from any place. The controversy with Penn about the Delaware territory was referred by Charles II. to the lords of the committee of trade and plantations, in 1683, but their report was not made until after the death of Charles and the accession of James II., in 1685. The report recommended, that the land between the Delaware and Chesapeake bays should be divided into two equal parts, by a line from the latitude of Cape Henlopen to the 40th degree of N. latitude, (the South boundary of Pennsylvania by charter,) and that one-half thereof, lying towards the bay of Delaware and the eastern sea, be adjudged to belong to his majesty, (viz., to King James, who granted it to Wm. Penn, when Duke of York,) and that the other half remain to Lord Baltimore, as compromised in his charter."

This division was by the king in council ordered immediately to be carried into effect, (the order enuring to the benefit of Penn as
grantee of James Second, when Duke of York,) and though
174 delayed for many years, by obstructions of Lord Baltimore, was finally, by Queen Anne, ratified and confirmed in all

parts, and commanded to be put in execution without delay. (Proud's History of Pennsylvania, vol. i., 293, &c.)

By this order of the king, in council then ratified and ordered to be carried into immediate execution by Queen Anne, it was proposed to deprive Lord Baltimore of more than one and a quarter millions of acres of his territory upon the pretext afforded by two unfortunate Latin words in his charter—"*hactunes incutta*," which, though urged in vain against the charter by the Virginians in 1633, 1638, and during Cromwell's time, and by the Dutch ambassador in 1659, were finally made available to accomplish this momentous result under the potent influence of Wm. Penn. But the order still remained unexecuted. Perhaps the mode of enforcing its execution, consistently with the principles of Magna Charter and English law, was not free from doubt. And though Lord Baltimore's right to the 40° of North latitude was expressly recognized by the report of the committee of plantations, and by its confirmation by the king and council, Penn persisted in his efforts to extend his Southern bounds to the head of Chesapeake bay. He procured a writ of *quo warranto* to be issued against Lord Baltimore's charter, thus threatening it with total destruction. But the revolution of 1688, and other revolutions and troubles so affected both proprietaries and their provinces that the controversy lingered until the death of Penn, in 1718; was revived by his sons and devisers, who, in May, 1732, obtained from Lord Baltimore a written agreement whereby he conceded to the Penns the Delaware territory, and that the Southern boundary of Pennsylvania should begin at a latitude of 15 miles South of the most Southerly part of Philadelphia, and run due West to the Western extremity of the two provinces. The agree-
175 ment was finally enforced by a decree for specific performance passed in 1750, which formed the basis of another agreement between the two surviving Penns and Lord Frederick Baltimore in 1760. The result was the completion of the existing line between Delaware and Maryland, and Pennsylvania and Maryland in 1768.

We submit that this historical summary, the facts of which are unquestionable, clearly show that the location of the Pa. line 15 miles below the 40° of latitude, or at 39° 43' 18" North of the equator, was not the result of a line run or measured North two degrees, at 60 miles to a degree, from Watkins point on the 38th parallel of latitude, as stated by Col. McDonald in his report. And we further submit that the 38th parallel either as erroneously located in former times or as correctly located on the map of Chesapeake bay, made by the United States coast survey, has no connection whatever with the question of the true location of Watkins point, as called for in the charter or of the Calvert-Scarborough line.

The Western Boundary of Maryland.

The boundary line between Maryland and Pennsylvania extended West to the true meridian of the first source of the river Potomac. Whether this first source was at the head of the North or South branch was a subject of controversy, between the proprietary of Maryland and the claimants of Northern Neck, down to the Revolu-

tion—1776; and between the states of Maryland and Virginia from that time down to the year 1852.

During the controversy, actual surveys proved that the source or first fountain of the South branch was the most Western, and the proprietary of Maryland and the state of Maryland had persistently claimed to the first fountain of that branch. It may be true that Lord Baltimore's charter did not confine him expressly to
176 follow the true meridian to that first fountain. And if this be admitted, we submit that the result would have been to give Lord Baltimore his election between following the meridian due South to the first fountain and selecting the most advantageous line in a Southeasterly direction to the further—that is, the Southern bank of the stream which flowed from the first fountain. Sir George Calvert was well aware that in construing grants from the sovereign the rule of the common law, that the grant shall be construed most strongly against the grantor, is reversed from considerations of public policy; and, therefore, in preparing his charter, he provided against the operations of this rule of construction, by the 22d section of the charter, as follows, viz: "And if, peradventure, hereafter it may happen that any doubt or question should arise concerning the true sense and meaning of any word, clause or sentence contained in this our present charter, we will charge, and do command, *that* interpretation to be applied always and in all things and in all our courts and jurisdictions whatsoever, to obtain which shall be judged to be more beneficial, profitable and favorable to the aforesaid Baron of Baltimore, his heirs and assigns."

McMahon's History of Maryland, p. 50, states the grant of Lord Hopton and others to have been "of all that tract of land, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quircorigh, or Potomac (the courses of the said rivers as they are commonly called and known by the inhabitants) and the Chesapeake bay."

He says: "These grants of the Northern Neck, as it will be perceived, call for the lands lying on the South side of the Potomac to its head, and in this call there was nothing inconsistent or clashing with the call of the charter of Maryland." and "therefore a conflict between these two grants could only arise from the extrinsic
177 difficulty or doubt as to the true location of the first fountain or head." On page 69, McMahon says: "As to the *chartered* extent of Maryland there can be little room for doubt." *"The first fountain of the Potomac"* is evidently a descriptive term intended to designate the most westerly source, and applies to the South branch, the source of which lies considerably West of that of the North Branch. The extent of territory lying between the two branches is estimated at *half a million of acres*, including some of the most fertile lands of Virginia." In 1776 Fairfax was the proprietor of the Northern Neck, to the extent of the ownership of the land, but subject to the jurisdiction of the royal government of Virginia. By the constitution of Virginia of 1776, the commonwealth succeeded to all the rights of sovereignty belonging to an independent nation. That constitution declared that "the territories contained within the char-

ters erecting the colonies of Maryland, Pennsylvania, and North and South Carolina, are hereby ceded, released and forever confirmed to the people of these colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potomaque and Pocomoke, with the property of the Virginia shores and strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon.

"The Western and Northern extent of Virginia shall in all other respects stand as fixed by the charter of King James I. in the year 1609, and by the public treaty of peace between the courts of Britain and France in the year 1763, unless by act of this legislature one or more governments be established Westward of the Alleghany mountains."

The state of Maryland had succeeded to all the rights of
178 Lord Baltimore's charter, but the act of quit claim of Virginia still left open the question as to the extent of the territory contained within the charter. The controversy, from the beginning, seems to have been confined to the question whether the Maryland charter extended to the North or to the South branch. Repeated efforts to settle it by commissioners appointed by the respective states failed. At length Maryland, by the act of 1852, proposed to adjust and mark the Western boundary line, "beginning therefor at the Fairfax stone." This offer was accepted by the act of Virginia of March, 1858, and by an act of Maryland of March, 1860, the line "as surveyed in the year 1859 by the commissioners appointed by the states of Maryland and Virginia" was established as "the Northwestern line of the state."

Thus ended a controversy of more than a century's duration. And the results of losses to Maryland of territory once clearly included within the limits of her charter may be estimated thus: To Delaware, one and a quarter millions of acres: to Pennsylvania, two and a half millions of acres: and to Virginia, a half million of acres—making a total of four and a quarter millions of acres of land, in addition to about one hundred and fifty thousand acres "left out" between Onancock river and the Scarborough line on the Eastern shore.

The Southwestern Boundary Line of Maryland.

After the call to the true meridian of the first fountain of the river of Potomac, the charter says, "thence verging towards the South unto the further bank of the said river, and following the same on the West and South, unto a certain place called Cinquack." (Bacon's translation.) "Thence stretching towards the South unto the furthest bank of the said river, and following the West
179 and South side thereof unto a certain place called Cinquack." (Ogilby's America.) "Then tending downwards towards the South, to the further bank of the said river, and following it to where it faces the Western and Southern Coast, as far as to a certain

place called Cinquack, situate near the mouth of said river, where it discharges itself into the forenamed bay of Chesapeake." (Thos. Edlyn's Tomlins.)

At the time of Lord Baltimore's charter the Potomac river had been explored only to the falls, and up the Quirough, which was supposed to head further West than the main river, and both were supposed to head East of the Blue Ridge. In this uncertainty, and with the aid only of Smith's Map, the descriptions of the head springs, and course of the river, were necessarily conjectural, and therefore vague. Like the other great rivers flowing into the bay, on its Western shore, its general course was supposed to be Southeast. In describing the Western line from Delaware bay, the charter had the words, *"transeundo orecta linea per gradum predictum usque ad verum meridianum,"*—going by a right line on the degree aforesaid as far as to the true meridian, &c. But after arriving at the true meridian of the first source of the river, another word is used to indicate the course, viz., *"deinde vergendo versus meridiem,"*—thence tending, or the old word "trending," towards the South; *"ad ulteriorem dicti flumenis ripam"*—to the farther bank of the said river; *"et eam sequendo,"* and following it, (the bank, not the river, for if *"it"* referred to the river, the Latin would have been *"id"*, agreeing with *"flumen"*, understood.) *"qui plaga occidentalis et meridionalis spectat"*—where the Western and Southern coast or shore *looks;* meaning where, or in the direction that, the *right* bank or shore *looks,* or in the direction towards which the right shore lies; as contradistinguished from the *left* bank, or shore, which is the
180 Eastern and Northern shore. Bacon's version has *"ad meridionalem,"* in the place of *"et meridionalis"* in the copy from the Rolls' office. And this seems to be the "gross departure from the *original*" which Col. McDonald supposed led to the erroneous opinion, or translation, indicating the Southwestern shore of the Potomac as Maryland's boundary. It is probable that *"et meridionalis"* is the correct version, as it is better Latin and more accurately descriptive. But it is not perceived that the sense is materially changed. The translation would be "where the Western coast looks toward a Southern direction"—*"meridionalem"* being an adjective, a noun must be understood or supplied. Mr. Tomlins is certainly in error in translating the words, *"qua plaga occidentalis et meridionalis spectat"*—to where *it* faces the Northern and Southern coast." To what does *"it"* refer? Certainly not to the preceding "it", for that referred to *"eam* (*ripam,"* understood.) *"Plaga"*, shore or coast, is substituted for *"ripa"* bank. *"Plaga"* is the nominative to *"spectat"*—and there is nothing in the Latin to be translated "it". It is the "coast or shore" that "faces," or looks, or "lies toward". But it is submitted, with deference to Mr. Tomlins, a London "attorney at law and record solicitor," that *"plaga"*, the coast or shore, is personified and represented as looking at the river and following the flowing stream with its gaze in its onward course towards the bay. In 1829, Chancellor Bland, of Maryland, in deciding upon a claim to certain water rights on the Potomac river, and remarking upon the jurisdiction of Maryland over that river

said: "The boundary called for in the charter of Maryland is from the first fountain of the river Potomac; thence verging toward the South unto the further bank of the said river, and following the same on the West and South unto a certain place called Cinquack, situate near the mouth of the said river, &c. To the full extent of this call for the right bank of the Potomac, Md. held; and
181 under that holding all the islands in the river have been granted by patent from the land office or legislative enactments or titles derived from this state."

"Before the revolution, Maryland granted lands between the North and South branches of the Potomac." Binney's case, 2 Bland's Chancery Reports, 127.

The Virginia constitution of 1776, and the compact of 1785 certainly modified, to some extent, the charter limits of Maryland. There were a few maps after 1750 which indicate the divisional line on the North shore of the Potomac to Point Lookout. These were probably so made in the interest of the Fairfax claim under the grant of Charles II to Lord Hopton and others. The recital of the terms of this grant by McMahon and by Col. McDonald shows a material difference. McDonald says: "The express words were the rivers of Potomac and Rappahannock, and all the islands within their banks." If these were the terms of the grant so far as they relate to the Potomac and its islands, they were in direct conflict with the charter of Charles I to Lord Baltimore, nearly twenty years before the grant to Hopton, and, of course, to that extent were merely void. One or two maps have been found which indicate the divisional line down the middle of the Potomac river and across the bay to the South of Watkins point and up the Potomac river. But the most authentic maps existing in 1776 indicated the line from Smiths point direct to Watkins point. It is remarkable that in the compact of 1785 provision is made for punishing offences committed on that part of Pocomoke river within the limits of Virginia or where the line of division between the two states upon the
182 *said river is doubtful*, but no such provision is made in regard to the Potomac, a much wider river. The reason must have been that Virginia had excepted from the limits of the Maryland charter on the Potomac river only "the Virginia shore and strand," which could only extend to low water mark, and to such improvements beyond that mark, as Virginia might deem proper to authorize, leaving the residue of the river within Maryland jurisdiction for punishing offences committed upon it. This seems to be the legal effect, so far as regards the question "of jurisdiction." For all beneficial purposes, such as "the right of fishing in the river," &c. The compact is that "the river shall be common, and equally enjoyed by the citizens of both states." It is understood that the above is the construction acted upon by the judiciary of both states, and hence within a few years a Virginia court declined to take jurisdiction of a homicide committed on a steamer lying at Acquia creek, because the proof was that the offence was committed on a part of the steamer which was below low water mark. The prisoner

was sent to Maryland, tried, convicted and executed in Charles County, Maryland.

There seems to have been no difficulty originally in understanding the meaning of the charter. The line of boundary began at a point on the Chesapeake bay; thence by a right line to the ocean; thence by and with the ocean and Delaware bay to the 40th degree of latitude; thence West by a right line to the *m*aridian of the first source of the Potomac river, thence towards the South (and a right line South answers that description) to the farther bank of the river; thence following the bank and the Western and Southern shore of the river down to Cinquack near the mouth of the river, and thence by the shortest line to the beginning. There never was any doubt where Cinquack was. It is plainly marked on Smith's map and Lord Baltimore's map, and all the ancient maps,
183 and was rightly described in the Virginia proclamation of 1638 as being at the Great Wicocomico river and the starting place of the last line of the charter.

That the Southwestern shore of the Potomack was, down to 1776, understood by the Virginians to be the boundary line of the Maryland charter, is, we submit, implied by the terms used and already cited from the Virginia Constitution of that date. The territory contained within the charter is ceded to Maryland, with all rights which might at any time have been claimed by Virginia, except the free navigation and use of the Potomack and Pocomoke rivers, with the property of the *Virginia shores and strands bordering on either of* said rivers, and all improvements which had been or shall be made thereon. And we think it is still more clearly implied by the compact of 1785, re-enacted in the Virginia Code of 1849 and 1860, under the title "Compact and Boundary between Virginia and Maryland." The tenth section declares: "That crimes and offences committed in that part of the Chesapeake bay which lies within the limits of Virginia, or that part of the bay where the line of division from the South point of Potomac river (now called Smiths point) to Watkins point, near the mouth of Pocomoke river, may be doubtful; and on the part of Pocomoke river within the limits of Virginia, or where the line of division may be doubtful," &c. This article assumes as a fixed fact that the line of division runs from the South point of the Potomac river, now called Smiths point, to Watkins point, near the mouth of the Pocomoke river. And by this compact Maryland gave up her charter claim to follow the bay shore down to the place formerly known as Cinquack, at the mouth of Great Wicocomico river, distant about six miles South from Smiths point. And again: This fixed fact is assumed by the action of both states in authorizing the joint commission of 1858. The Virginia act of March 26th,
184 1858, recites that: "Whereas the general assembly of Maryland has passed two acts for running the boundary line between that state and the state of Virginia, beginning therefor at Smiths point, at the mouth of the Potomac river, and running thence to the Atlantic ocean, to form the Eastern line; beginning at the Fairfax stone, on the Potomac river, sometimes called the North

branch of the Potomac river, at or near its source, and running thence due North to the line of the state of Pennsylvania, for forming the Western boundary line; and, whereas, the legislature of the state of Maryland has requested the appointment of a commissioner on the part of this state to act in concert with the commissioner of Maryland to run, ascertain and mark the said lines: Therefore,

"I. Be it enacted by the general assembly of Virginia, That the governor be and he is hereby authorized and required to appoint as soon as may be, a commissioner, who, together with a commissioner who may be appointed on the part of Maryland, shall cause the said lines to be accurately surveyed, traced and marked with suitable monuments, from Smiths point, at the mouth of the Potomac river, to the Atlantic ocean; and from Fairfax stone, situated as aforesaid, to the Pennsylvania line as aforesaid."

We think, therefore, that it ought to be considered settled beyond question that the divisional line across the Chesapeake bay is to be run from Smiths point. There can be no doubt about the true location of Smiths point. It is upon the island at the mouth of Potomac river, which, by patent, dated 18th March, 1650, was granted by Sir Wm. Berkley, governor of Virginia, unto Sam'l Smith, for 529 acres of land. It is described in the grant as abutting Northerly upon the mouth of Potomac river; Southerly upon Little Wickocomico creek; Easterly upon ye mayne bay; and Westerly upon a
185 branch that divides this land from a parcel of land commonly called "King's Neck." Of course, like all other points of land similarly situated, it has been washed away, and greatly changed since 1785. Mr. Dela Camp, who made the survey of Somers cove and of the shore of James island, under the direction of Michler, in 1858, and again under the joint commission of 1867, stated in his report that he found all of them very much changed since 1858.

The map of the United States coast survey, showing the soundings in the vicinity of this island, may be considered as indicating with reasonable certainty where the land originally extended.

The Boundary Line Across the Chesapeake Bay.

The description of this line in the charter is brief and free from doubt—viz: From Cinquack "by the shortest line to the aforesaid promontory, or place called Watkins point."

The American Atlas, containing the most correct and authentic maps of the British colonies down to 1776, has "a Map of the Middle British Colonies, by Lewis Evans, of Philadelphia, corrected and improved by Thos. Jeffreys, geographer to the king, and published in London 15th June, 1775," which indicates the divisional line between Virginia and Maryland from Smiths point, near Cinquack, a few degrees to the North of East, passing South of Watkins point through Pocomoke bay and across the peninsula to the ocean. It contains also "A Map of the most inhabited part of Virginia and the whole province of Maryland," &c., drawn by Joshua Fry and

Peter Jefferson, in 1775, and inscribed by Thos. Jeffreys to the Earl of Halifax and the other hon. commissioners for trade and plantations. Watkins point is distinctly laid down on this map, and the divisional line across the peninsula East to the ocean is clearly marked below the 38°th of latitude, and under it are these words:

"This line was run 27 May, 1688." The line on the Poto-
186 mac and across the Chesapeake bay is not indicated on this map. Smiths point is shown as an island at the mouth of the Potomac and Little Wicomico rivers, a very little South of Watkins point on the Eastern shore, as located on this map.

In the rooms of the Maryland historical society is "A Map of Virginia, Maryland, Pennsylvania, and East and West New Jersey, by John Thornton, at the Platt in the Minories, and by Wil. Fisher, at ye Postern Gate, on Tower Hill, London," supposed to have been published about the year 1700. On this map the divisional line between Virginia and Maryland begins at Smiths point thence across the bay by a due East course, and crosses the peninsula to the ocean by a line indicated by a row of boundary trees on each side of it. The divisional line on this map leaves Smith's island entirely in Maryland. The Churchman Peninsula Map, before described, has no divisional line indicated across the bay. The island *on* which is Smiths point is located about two miles South of the 38th parallel as located on this map, and an East line from it crosses the lower end of an island supposed to represent Smiths island, and touches the Southern end of Watkins point, and if extended would strike the East shore of Pocomoke bay about two miles South of the 38th parallel. The shortest line upon the map of the United States coast survey from Smiths point, running East about three degrees North, will strike the Westernmost angle of Great Fox island near Cedar straits, and the shortest line to the land North of Cedar straits and Pocomoke will strike the Westernmost angle of a tract of land called Plain harbor, granted by the proprietary of Maryland on the 19th day of July, 1702, to Isaac Horsey and Nathan Horsey for five hundred acres of land. The patent described this land as lying and being in Somerset county, between the sound and Pocomoke bay
and Cedar straits, beginning at the mouth of a creek on
187 Pocomoke bay, on the Westermost side thereof, called Broad creek; hence along the said bay Westerly several courses and distances to Cedar straits; thence along therewith North 15½ degrees Westerly, taking in Cedar hammock, 118 perches to the sound or bay-side; thence along the sound Northwesterly North, &c., &c., to the beginning.

This patent of Plain harbor completes the chain of Maryland grants extending from Tangier sound by Cedar straits to Pocomoke bay and up the Northeastern shore of the bay and river to the land West of the beginning of the Calvert-Scarborough line at the marked trees on the East side of the river, covering all the land South of the prolongation Westward of that line to the sound at Jones island. It is admitted that no grant from Maryland has been found for the land South of Cedar straits; but that since they were found, and after the neck of land which formerly extended from Annamessex

marsh Southward to the North side of the mouth of Pocomoke bay at Watts island had been broken into Fox and Watts islands, those islands appear to have been granted by Virginia, and to have been since held, and are now held under Virginia titles; and have ever since the date of the grants of Fox island in 1699, and of Watts island in 1702, been under the jurisdiction and government of Virginia, as part of Accomac county, as fully and as exclusively as the lands upon the North side of Cedar straits and Pocomoke bay, as before described, have been owned, held and governed under Maryland grants, as part of Somerset county.

The record of these grants by the respective states, and the certain holding in accordance with them, strongly corroborates our construction of the Calvert-Scarborough agreement, and the tradition derived through old Mr. Tornemay Nelson, that the divisional line between the two states crossed the North end of Fox Island. That part of the island where the line was said to cross, has doubt-
188 less long since been washed away, and is now covered by the waters of the sound and Cedar straits. The tradition must have had its origin (after Smiths point had been substituted for Cinquack as the starting point towards the Eastern shore) in the fact that the Northwestern angle of Fox Island was the point which would be reached by the shortest line from Smiths point; for there is no record that any line was ever run across the bay, or any means adopted by the two states to fix a boundary at the termination of the line on the Eastern shore. After the agreement of Calvert and Scarborough that the North point, formed at the mouth of Pocomoke river by the bay, should no longer "be accounted" the Watkins point of the charter, as claimed by Lord Baltimore, but that the parcel of land as described in that agreement should be so "accounted," it became inevitable that the line across the bay from Smiths point should strike the angle of that Watkins point nearest to Smiths point. And that angle is at Cedar straits.

Smith's Island.

A right line from Smiths point to Cedar straits, as those places are located on the map of the United States coast survey, leaves all of Smiths island as located on that map within the limits of Maryland. The Churchman Map and most of the maps we have examined, which were made before the United States coast survey, locate Smiths island farther South than its true position as ascertained by the coast surveys.

The experimental line, run by the direction of the joint commissioners in 1858, in its prolongation Westward from Pocomoke river, was upon the theory that thereby "the Westermost" angle of Watkins point, as described in the Calvert-Scarborough report, might be ascertained. Michler states that "drawing the line" from "Smiths point" "across Smiths island," *at* or *near the point* where the said
189 line is said to pass, it will be seen that it intersects the prolongation of the Scarborough line very near the anchorage of the light ship, and where formerly existed the shore line." He

states that the Southern extremities of Smiths island have been always acknowledged to be within the jurisdiction of Virginia; and that with the exception of four or five acres of firm ground were sites for rude fishermen's huts. The other portions of these islands, *South of what is considered the boundary line from Smiths point to Watkins point* across the Chesapeake bay, consists of salt marshes." We have already given our view of the Calvert-Scarborough line, and of the charter line across the bay to Cedar straits. We think it highly probable that the idea that any part of Smiths island was within Virginia territory had its origin in the dispute over the true location of Watkins point, which commenced in 1663. The Virginia records show that Henry Smith, then of Accomack county, on a warrant for lands due him from Virginia, took up a tract of land on Smiths island, for which he obtained a grant from Governor Berkley of Virginia, dated 6th October, 1667. This grant is recited in a deed, in the land records of Somerset county, Maryland, as follows, to-wit: "Doth grant unto the said Henry Smith one thousand acres of land, situate in Accomack county, being part of an island, beginning where the East and West line from Smiths island doth intersect, and bound on the Northern part therewith; running Southerly to the farthest extent of the said island; bound on the Eastern and Western sides by parts of Chesapeake bay and sunken marshes. The description of this beginning is so indefinite and vague that we suppose it would be impossible to locate the tract of land. This grant bears date the year before the Calvert-Scarborough agreement. The authority and power of Calvert and Scarborough were limited to the single duty "of meeting upon the place called Watkins
190 point," and "thence to run the divisional line to the ocean sea." They had no authority to establish a line across the bay, or across Smiths island, and they made no attempt to do so. We have found no record that any divisional line was ever run across Smiths island under the joint authority of the two colonies or states; or that any such line was ever authorized to be run, or was run, by the direction of either Virginia or Maryland. Mere recitals in land grants to private individuals by either of the provinces or states, or calls in such grants for a divisional line between states, afford no evidence to prove the existence or location of such divisional line as having been established by competent authority. Divisional lines between states can be established only by treaty, compact, or some public charter or record of a public act, establishing such line by competent authority. Maryland and Virginia grants, subsequent to 1668, of land, between Pocomoke river and the ocean, call for the divisional line between those two colonies. But it is the line marked and established by the Calvert and Scarborough compact, of which there is record evidence showing when and by what authority and by whom it was run and established. But there is no evidence of any such line across Smiths island. And notwithstanding the numerous depositions taken by the present joint commission in relation to several divisional lines, stones and boundaries upon Smiths island, we confidently adhere to the statement contained in our report upon this subject to the Maryland general assembly in 1868,

that "there is no *certain tradition*, so far as the commissioners could ascertain, to fix the location of any divisional line between Maryland and Virginia across Smiths island. The testimony upon this subject was uncertain and conflicting. Besides the aforesaid grant to Henry Smith, there is on record, among the Virginia land patents,
a grant dated 23d October, 1703, to Francis McKenny, Ar-
191 cadia Welbourne, Daniel of St. Thomas, Jenifer and John
West of a tract or tracts of "marsh and woodlands, it being contained on six islands, beginning at a marked lightwood stump standing near Nanticoke sound, thence by marked trees and over marshes and guts, *West* 1020 *poles* to the main bay of Chesapeake, bounded on the West therewith on the South by Old Herne Island straits, and on the East by Naticoke round, and within this bound is contained 3,170 acres." The running of this West line across the North end of Smiths island, in 1703, doubtless gave origin to the tradition testified to by Severn Bradshaw and others. This grant must have been obtained in ignorance of Henry Smith's grant from Virginia of 1,000 acres, and of other previous grants from Maryland, covering all the lands and waters within the limits of Smiths island, and on finding out the mistake, the grant must have been abandoned as we have found no evidence of any land on Smiths island ever having been held or claimed under it. The first Maryland grant on Smiths island is the patent of Cadger's island—200 acres to Robert Cadger, 23d September, 1665, on the Eastern shore, standing in the bay, and calls to run along a marsh belonging to Annamessex bay, by a line drawn South to the straits mouth, standing against Pocomoke river. This description is evidently widely erroneous. A deed for part of this island in 1746 describes it as lying South of Cadger straits, which are North of Smiths island. The grant of Jones island "to Leonard Jones, 10th June, 1671, near Cadger islands 100 acres, and other grants from Lord Baltimore cover all the land North of the thoroughfare, comprising about one-third of the entire island. The next grant is of 1,000 acres, surveyed for Col. Wm. Stevens, 7th June, 1679, assigned to Henry Smith and patented to him 2d September, 1682, called Piteraft, and described as 'an island of broken woodland and marshes between Chesapeake bay' and an indraught of water called the
192 sound, beginning on the bay at a tree near the mouth of
Smiths thoroughfare, bounded thereby Easterly to the sound, and by the side of the said sound *to the divisional line* drawn between Maryland and Virginia, thence West by said divisional line to the bayside; and by the bay to the beginning. This tract called Piteraft, and sometimes "Pitcheraft," is bounded on three sides by water-lines—the thoroughfare, sound and bay. But there is no distance given to any one of its lines, and nothing whatever to indicate where the divisional line West to the bay-side began or ended except that it started from the sound and extended West to the bay. Henry Smith removed from Accomac to Somerset county, Maryland, before 1693, and finding that Col. Stevens had, under a warrant from the land office of Maryland, surveyed and located a tract of land on Smiths island, calling for a divisional line between Maryland

and Virginia, he obtained an assignment of Stevens' equitable title and received a patent for Pitcraft. If Virginia had title to the 1,000 acres granted him in 1667, or any part of them, he thus became owner of all the island South of Smiths thoroughfare. His first sale and conveyance of part of these lands was to John Tyler, of 200 acres, by deed dated 8th August, 1693, which recites the grant by Sir Wm. Berkley of 1,000 acres lying in Virginia, and the survey of Pitcraft by Col. Stevens, the assignment to Smith and the patent to him for 1,000 acres of land called Pitcraft from Lord Baltimore. The deed conveyed to John Tyler a parcel of land, 200 acres, taken out of *the said* 2,000 *acres* granted by said Sir Wm. Berkley and Lord Baltimore, "being part thereof in Virginia and part in Maryland;" but there is nothing whatever in the descriptions or calls to indicate what part was in Virginia or what in Maryland. The deed is of record among the land records of Somerset county.

Within the limits of this deed to John Tyler, was included
193 the only high land fit for habitation on the Eastern side of the island. At the time of the deed, 1693, there were probably 5 or 6 acres of this high land which has been mostly washed away, leaving an extensive shoal and about two acres of high land.

At this place John Tyler is supposed to have built his dwelling; and from time immemorial it has been known and called "Horse hammock". The descendants of John Tyler continued to own it until 1842, when, by deed, dated October 2d, 1842, Wm. Tyler and wife conveyed to Peter Evans, "all that tract or parcel of land called 'Horse hammock,' or by whatsoever name the same may be called, situate, lying and being on Smiths island, in Somerset county, in the state of Maryland." Peter Evans removed to Accomack county, and by deed dated 3d October, 1857, conveyed Horse hammock to John W. Marsh, describing it as being in Somerset county, and contained within metes and bounds, beginning at a well known bounder stone lying at the sound side, about three-fourths of a mile to the North of the house, and thence running a West course across the marsh to Tylers creek; thence Southerly by the creek to a well known point called Horse hammock point; and thence up the sound side to the beginning. Marsh and wife, by deed of 30th January, 1866, conveyed same land by same description, to Johnson Evans and John W. Evans; and John W. Evans and wife, by deed of May 11th 1872, conveyed their interest, by the same metes and bounds, to Johnson Evans.

All these deeds are recorded in Somerset county, and the place and its occupants have always been under Maryland jurisdiction as a part of Somerset county, as far as we have been able to ascertain. The stone mentioned in these deeds could never have marked the beginning of a divisional line across the island between the two states, because the deed to John Tyler called for part in Maryland and part in Virginia, and all South of the divisional line would be
194 in Virginia.

But all question as to the jurisdiction of "Horse hammock" ceases as soon as it is settled that the line across the bay starts from Smiths point. According to the map of the United States coast sur-

vey a right line to Janes island light (even if that point should be decided to have been the place where the Westermost angle was) will leave Horse hammock point and a small part of South point marsh and Shanks hammock, with its "4 or 5 acres of firm ground" and its half dozen families within Virginia. And we think it cannot be questioned that a decision fixing "the extremest part of the Westermost angle of said Watkins point" at the Southwestern end of Janes island bar, would involve a correction of the mistake of "undue proceeding," in running the line in 1668, 5° 15″ North of East, instead of allowing for that variation of the needle so as to "run an East line," as their report avers that they did and which the charter required. We are informed that the act of the Virginia assembly, in force in 1668, required surveyors, in running lines, to allow 5 degrees for variation of the needle. If this be so, Colonel Scarborough, an intelligent Virginian, and surveyor general of Virginia under "his royal majestie's commission," would be presumed to have been aware of it. And if he knowingly caused or permitted the divisional line to be run without such allowance it was (to use the phrase of Governor Calvert on a former occasion) an "undue proceeding." In either case equity would rectify the error.

The result would be a due East line running South of the lighthouse in Little Annamessex river, crossing Ape's Hole creek a short distance North of its mouth, and striking Pocomoke bay a short distance beyond Ape's Hole creek; thence across Accomac county, South of Pitt's wharf and New church, and within a quarter
195 of a mile of Horntown, and including in Maryland nearly all of Chingoteague bay. This line would deprive Maryland of a small part of her territory and some valuable citizens in Little Annamessex neck, who on becoming citizens of Virginia, would have opened to them the oyster grounds, not only of Pocomoke bay, but of all other Virginia waters accessible to citizens of Accomac county. It would restore to Worcester county the twenty-three square miles, equal to 14,720 acres of land, now included in Accomac county in consequence of that error. But it is believed that such result is not desired by either side. It is natural that the residents in the vicinity of the line should prefer to remain, as far as practicable, under the *jurisdiction of the state to which they have been accustomed.*

To effect this,

A just and equitable compromise line ought to be adopted.

It is eminently a fit case for the adoption of a just and *and* equitable compromise line. We have entered into a somewhat elaborate examination of the probable original location of the Watkins point of the charter. We have shown the large concession of Maryland territory by the agreement of 1668. That concession was perhaps inevitable, as there was no tribunal in that day to which Lord Baltimore could have resorted with hope of fairness and justice.

The retracing in 1858 of the line of 1668 disclosed that by an error in the original running of that line nearly 15,000 acres of land were improperly taken from Worcester county and included in the county of Accomac.

It has been shown that in the compact of 1785 Maryland yielded

the line from Cinquack and accepted Smiths point (five or six miles further North) as the starting point of the line across the
196 bay. And in the controversy over the North and South branches of the Potomac, she yielded a claim which, in the judgment of some of her most eminent lawyers, was unquestionably legal and just. It is remarkable, too, that in the compact of 1785, while conceding that the right of fishing in the Potomac river shall be common to and equally enjoyed by the citizens of both states, Maryland omitted to secure, by express terms, reciprocal rights in the Pocomoke river. It is but just to Virginia, however, to state that until recently her laws regulated the taking of oysters and terrapins in the rivers Pocomoke and Potomac, secured to the citizens of Maryland equal privileges with citizens of Virginia in that regard. We regret to be compelled to say that the attempt of late years to exclude citizens of Maryland from equal privileges in taking oysters in Pocomoke sound, is a departure from that reciprocity, in that regard, which had theretofore ever existed between these two states. We suppose that this departure originated in a misapprehension of the purpose of the preliminary survey made by Michler under instructions of the Virginia and Maryland commissioners in 1858. Their commission was to retrace and mark the boundary "between Smiths point, at the mouth of the Potomac, and the Atlantic." In the execution of this duty, it became obvious that further legislation would be necessary before the line could be established. Col. Lee reported that they "concluded to obtain, in addition to the evidence already at hand, the best local information by an actual survey of the vicinity of the boundary, and to lay the whole before their respective legislatures for their action thereon." But the legislation of Virginia seems to have proceeded upon the mistaken idea that the preliminary survey established a divisional line; whereas the survey revealed, for the first time, a serious error in running the
197 line on which were "marked certain trees," and "other apparent marks and boundaries", while the residue of the line was left in obscurity and uncertainty. Col. Lee accounted for this, with much force, in his report, in the statement that "until recently all existing maps of Maryland and Virginia erroneously placed the North shore of Pocomoke bay so much too far North as in some degree to conceal the want of conformity with the provisions of the charter; as upon these maps the present boundary between Worcester Maryland, and Accomac, Virginia, if produced Westwardly from Pocomoke river to the Chesapeake bay, would pass for almost the whole distance over the Northern portion of Pocomoke bay."

The present joint commission is empowered to adjust and settle this disputed line, subject to confirmation or rejection by the respective states. And in view of the whole case, the Maryland commissioners respectfully submit to the Virginia commissioners the following line, to be established by compact between, that is to say—

Beginning at low-water mark at the divisional line between the two states of West Virginia and Virginia, upon the Southwest coast or shore of the Potomac river; thence following the said river at

said low-water mark, to all wharves and other improvements now extending, or which may hereafter be extended by authority of Virginia from the Virginia shore into the said river beyond low-water mark, and following the said river, around said wharves and other improvements, to low-water mark on the Southwestern side thereof, and following the said river in the same manner down to the Eastermost angle of Smiths point at the mouth of the said river Potomac, where it flows into the Chesapeake bay; thence by a right line to the centre of Cedar straits upon Tangier sound, near the Southern end of Watkins point; thence by a right line in a Southeasterly direction
to the channel of Pocomoke bay or river nearest to Cedar
198 straits; thence up, by and with the said channel of said bay and river to a point therein opposite to the place on the East shore of the said river ascertained by Mr. De la Camp, in 1867, as the beginning on said shore of the divisional line run and marked by Calvert and Scarborough in 1668; and thence by and with said divisional line, as surveyed and laid down on the map made by said De la Camp for the joint commissioners in 1868, to the Atlantic ocean. The right of fishing and taking oysters in Pocomoke bay and river to be common to the citizens of both states, subject to concurrent regulations by the two states.

ISAAC D. JONES,
LEWIS L. WATERS,
WM. J. AYDELOTT,
Commissioners of the State of Maryland.

199 B.

Statement on the Part of the Commissioners of Virginia.

A succinct statement before the joint commission of the states of Maryland and Virginia, to settle and adjust their boundaries, made on the part of the commissioners of Virginia, at Richmond, Va., November 7th, 1872, citing some of the main evidence, and reserving the right of adducing other evidence, if necessary, to support the claims of Virginia.

I.

"By letters patent granted by Queen Elizabeth to Sir Walter Raleigh, which bear date March 26th, 1584, she gave to him and to his heirs and assigns free liberty to search for and find such *barbarous lands not possessed by any Christian people,* as to him might seem good and the same to occupy and 'enjoy forever.' This grant was without any other definite limits." See Hakluyt, vol. 3d, p. 243; also Williamson's History of North Carolina, vol. 1st, p. 219.

This first settlement made by the English in Virginia, and the first British settlement established anywhere on the continent of North America (see Hakluyt, vol. 3, p. 243) was abandoned by its founders A. D. 1590. See Smith's History of Virginia, vol. 1, p. 105.

Queen Elizabeth, in 1584, named the whole country claimed by Great Britain, Virginia. See Hakluyt, vol. 3, p. 246.

That queen died in 1603, and was succeeded by James I., and in the year 1606, he issued his letters patent to settle colonies in Virginia. The first patent bears date April 10th, 1606. By
200 these he divided that portion of Virginia which lies between 34° and 45° N. L. into two colonies and two districts of territory. In one of these, called the First or Southern colony of Virginia, he authorized the London company, Sir Thomas Gates and others, his associates, to plant a colony wherever they might choose, between 34° and 41° N. L.; and he vested in them a right of property in the land extending along the sea coast fifty statute miles on each side of the place of their first plantation, and reaching into the interior 100 statute miles from the sea coast. The other of these colonial districts, called the Second or Northern colony of Virginia, he allotted to the Plymouth company, Thomas Hanham and others, his associates. These he authorized to plant a colony wherever they might choose between 38° and 45° N. L., and he gave to them a territory of similar limits and extent to that given to the first colony. He provided, however, that whichever plantation of the said two colonies should be *last made should not be within* 100 *miles of the other that might first be established.* These two colonies, at first called the London and Plymouth companies, soon dropped their names, and the name of Virginia, which at first was applied to both of the colonies, was retained by the Southern colony only, while the Northern colony was called New England. See Charters, Smith's History of Va., appendix No. 1.

The London co. commenced its settlement first. On the 13th May, 1607, the adventures of that company established their first habitation at the place named by them James City. See Smith's History of Virginia, vol. 1, book 3, ch. 1, p. 149.

The first charter of April 10th, 1606, itself enables us to determine with great accuracy the limits of the grant made by it to the London company. If a meridianal line be drawn through James
201 City, and extend each way to the distance of fifty statute miles from it; if parallels be drawn through the extremities of this meridian, and extended to the sea coast; if 100 statute miles from thence be laid off upon each of these parallels; and if a straight line be drawn from the extremity of one of them so determined to the extremity of the other, the diagram so to be constructed may be considered as a parallelogram or square, the base of which will be 100 statute miles, and its area 10,000 square miles.

Such a diagram, so constructed, is in precise accordance with all the calls of this charter. This charter was granted before the country to which it was designed to apply was discovered and the territory could not reasonably be confined to such limits, owing to its many disconnected peninsulas. This was soon discovered by the explorations of Captain John Smith in the year 1608 (see Smith's History of Virginia, vol. 1, book 3, chps. 5 and 6, and the map.) Accordingly, the London co. applied to the king to alter this charter, and on the 23d May, 1609, he issued new letters patent of that date for this purpose.

The Plymouth co. had then made no settlement, so that the

whole country granted *was as open to the new grant as it had been in* 1606.

Before this second charter was granted to the London company, the Northern headland, at the mouth of the James river, was discovered, and called by the name it still bears, Point Comfort. Taking this known and established position as a starting point, the new charter granted to the company "all those lands, &c., situate, lying, and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea coast to the Northward 200 miles; and from the said Point or Cape Confort, all along the sea coast, to the Southward 200 miles; and all that
202 space or circuit of land lying from the sea coast of the precinct aforesaid up into the land throughout from sea to sea, West and Northwest; and also all the islands lying within 100 miles along the coast of both seas of the precinct aforesaid." See Stith's History of Virginia, appendix No. 2, p. 8, etc.

As one of the purposes of this second charter is declared in it to be "to grant a further enlargement and explanation of the former grant of 1606," and as no other change in the mode of determining the new and enlarged limits from that required for determining the boundaries under the first charter, except that the precise point of Cape Comfort is substituted for James City, we are bound to adopt the same mode of determining the new limits which had been adopted and approved in the former case. Therefore if a meridianal line be drawn through the point of Cape Comfort and extended each way to the distance of two hundred miles from thence; if parallels be drawn through the extremities of this meridian and extended from sea to sea (*i. e.* from the Atlantic to the South sea or Pacific) the diagram so constructed may be considered a parallelogram. The base of this will be the sea coast of the Atlantic, having a meridianal length of four hundred miles, bisected by the parallel of the point of Cape Comfort, and the altitude of this parallelogram will be the distance from sea to sea.

If we would know why the limits of the London company was extended precisely two hundred miles to the North of the parallel of the point of Cape Comfort, curiosity will be satisfied by taking the trouble to calculate the difference of latitude between that parallel and the more Northern parallel of 40°. In making this calculation allowance must be made for the trifling error caused by the imperfection of the clumsy instruments used in 1609 for making ob-
203 servations of latitude, as well as for the erroneous opinion then entertained as to the length of a degree of a great circle in English statute miles. We know now the exact quantity of each of these errors in our case; but it must be recollected that one of them (the last) puzzled Sir Isaac Newton almost a century after 1609. But, correcting the calculation in this way, we will so discover that two hundred English statute miles, measured along a meridian from the parallel of the point of Cape Comfort will carry us to the parallel of 40° North latitude; which last parallel was then made the common boundary between the two great districts of Virginia and New England. (The foregoing condensed statement is from Report No. 457,

28th Cong., 1st Session, H. Reps., "Issue of Scrip," etc., to accompany bill H. Reps. No. 353, made by Hon. E. W. Hubard, from the Committee on Public Lands, partly written by L. W. Tazewell, Esq., and partly by B. W. Leigh, Esq., and partly by Mr. Hubard. See his letter.)

This clear view of the grants and definite delineation of the territory granted, make manifest several cardinal points to be remembered throughout the discussion of the true boundaries of Virginia:

1st. The grants speak *by lines of latitude,* by *extent of measurement by miles,* and *not by natural objects,* such as places, rivers, &c., except as to the initial points of James City and Cape Comfort.

2d. They give no courses of lines except Northward and Southward from the initial point, and West and Northwest from sea to sea; and this applies to the territory granted, and *not to the lines* by which it was bounded; for the first grant was made before the discovery of the territory, and the second merely enlarged the first.

3d. The first grant *overlapped the territories of the two*
204 *companies three degrees of latitude, from* 38° *to* 41° *North latitude;* and the second made the 40th degree the Southern limits of New England without granting to the London company, sole, up to 40th° North latitude.

4th. The two lines of 38° and 40° North latitude, thus became cardinal points of boundary, and must be observed—the first as the *Northern limit of Virginia,* and the last as the extreme Southern limit of New England.

5th. And these facts and the 100 miles distance from one settlement to the other, enjoined by the charters, show the way the door was opened to the king for the prerogative grant to Lord Baltimore.

7th. Smith's map laid down the line of 38° N. L. far South of where it is now known to be, but not far from Smiths point, showing, as will hereafter appear, that the intent and meaning of the grants by Charles 1st on 20th June, 1633, to Cecelius Calvert, Baron of Baltimore, in Ireland, was to bound Maryland on the Western shore of the Chesapeake bay by the river Potomac, and on the Eastern shore of that bay by the parallel of 38° N. lat. on the South, that degree of lat. being the extreme limit North to which the territory of the London co. extended *originally in sole right,* and the space between 38° and 40°, being comparatively unsettled, except by the Indians, owing to the clause which put the two companies 100 miles apart. And, as will hereafter appear, the Watkins point named in the charter to Lord Baltimore as the initial point of bounds on the Eastern shore, was then known to be under the line of 38° North latitude. See "Considerations of Lord Baltimore's Patent, both in Law and Equity," and Calvert and Scarburgh's report in 1668. And to prove that Lord Baltimore himself tacitly admitted that his extreme boundary South, on the Eastern shore, was 38°
N. L., see his own memoir of his conference with William
205 Penn, in which Penn again and again so asserted to him without contradiction by him, when he was claiming North to 40° N. L. But especially note No. 117 of the De Jarnette papers,

August 19th, 1682, being the letter of the king reminding Lord Baltimore that he had but 2° N. L., South of 40° N. L.

Such was the original limits of the colony of Virginia, under the charters of the London company and the grant to Lord Baltimore.

II.

The charters of the London company (there were three) were cancelled by a judgment of the court of king's bench, pronounced in a case of *quo warranto* depending in that court at its Trinity term in the year 1624. But this took away only the *monopoly of the company* and the power of its government over the colony which were vested in the company by the charter, *without affecting at all the territorial limits or other rights of the colony itself;* and the only change was from the proprietary government of a trading company to a royal government over the same dominion and colony. See Hubard's Report, and see Chalmer's Annals, p. 63. The colonial legislature opposed the restoration of the charters to the company in 1642. See sec. 1, Hen. Stat. at Large, pp. 230, 236; see also answer of Governor Wm. Berkely in 1671 to one of a series of statistical inquiries of the commissioner for foreign plantations—"What are the bounds and contents of the land within your government?" 2 Ib. 514. See also the opinion of the Supreme Court of the United States in Johnson *vs.* McIntosh. Judge Marshall said: "This (the charter of Virginia of May 1609) was *annulled so far as respected the rights of the company*, by the judgment of the court of king's bench on a writ of *quo warranto; but the whole effect allowed to this judgment was to revest in the crown the powers of gov-*
206 *ernment and the title to the lands within its limits.*" 8 Wheaton, 578. The privileges of free denizens, or persons native of England, and the titles of proprietors of lands in free and common socage guaranteed by the charters survived their revocation; and property in the territory survived to the grantees or patentees. See Hubard's Report, p. 20.

The United States have recognized the right of Virginia to the lands included in the limits of these charters, and so has Maryland by accepting the deeds of cession from Virginia of her Northwestern territory on the condition imposed by herself, and the constitution of the United States recognizes and ratifies the contract of this cession acknowledging title in article 6, clause 1. Virginia does not claim her title under the charter. She claims it as a self-created body politic and corporate, which in 1776 proclaimed itself a free, sovereign and independent state. Self-created and self-sustained, after 1776, she claimed nothing *under these charters*, which were necessarily abrogated by the very fact of her independence. She refers to them constantly, as she would to any history, geographical treatise or authentic map, as the best evidence the nature of the case permits, to prove what are the metes, bounds and extent of the territory which she claims. She refers to them as she does to the grants made to others—of Maryland to Baltimore, of North Carolina to Lord Clarendon, and others, and of Pennsylvania to William

Penn—as proofs of what were and are the limits of that region in American called Virginia.

Virginia claims by virtue of her declaration of sovereignty, made in June, 1776, the truth of which declaration, then made, was afterwards (1783) recognized by the king of Great Britain, the former sovereign of this region. See Hubard's Report. Whilst a colony, in 1634, Virginia asserted her claim, under the charter, to
207 the territory of Maryland, and the king, in council, *did not decide against that claim,* but left her to her remedy at law. See the McDonald papers, vol. 2, page 135, S. P. O. col., vol. 6.

In all countries governed by the common law, precedent is of force to make law—constitutional as well as municipal law; in all civilized countries, without exception, prescription seems title. The precedent of the charter of Maryland, in effect, established the right of the crown to dismember from Virginia any part of her territory, at its discretion, without her consent; *but it in nowise affected the right of Virginia to such territory within her ancient limits as had not been dismembered from her.*

The charter was *annulled so far as respected the rights of the company, not in respect to the rights of the colony.*

The powers of government—the same powers which the charter had vested in the company,—as proprietor—were re-vested in the crown; the same title to the lands within its chartered limits, which the charter had vested in the company was re-vested in the crown.

The charter, so far from being annihilated, was recognized. The vacant lands in the colony were henceforth crown lands in the king's dominion of Virginia, and the extent of that dominion was only to be ascertained by the territorial limits described in the charter. Those lands could only be acquired by grants from the crown, according to a system of land laws enacted by the colonial legislature, and through the instrumentality of the colonial government. See Hubard's Report. The argument drawn from the judgment against the London company, in 1624, if of avail to prove that Virginia was not thenceforth entitled to claim under the charter of May, 1609, would prove too much. It would prove that she had no charter at all, for she never pretended to have any other; it would prove that Virginia, in her political capacity had no title to any terri-
208 tory whatever; not only no title to the Northwest of the Ohio, or West of the Alleghanies, but no title to the island of Jamestown, or the city of Williamsburg, or Old Point Comfort. See Hubard's Report—part written by B. W. Leigh.

But let her colonial existence and form of being be whatever it was, the colony became a sovereign state in June, 1776, and thereby became sovereign over her ancient limits, and the right of eminent domain is independent of all colonial charters or royal patents, and is as supreme as royalty itself.

III.

On the 19th August, 1629, Lord George Baltimore addressed to Charles I., a letter, now in the state paper office of Great Britain, endorsed "My Lord of Baltimore to ye king—9th August, 1629,"

(see 2d vol. of the McDonald papers, page 24,) complaining of his colony in New Foundland, proposing to remove himself "with some 40 persons to his majesty's dominions in Virginia," and praying for a grant of "a precinct of land with such privileges as the king, his father, was pleased to grant him in New Foundland."

The king replied by letter to Lord Baltimore, dated November 22d, 1629, S. P. O., Colonial, No. 38, vol. 5, (see the McDonald papers, vol. 2d, p. 1) advising him to desist from further proceeding and to return to his native countrie with his first conveniency, and promising him much favor. The letter to the king was accompanied by several papers, the first of which is endorsed "Demands, with reason for 2 degrees of Mr. Attorney General, 10th February, 1629." (McDonald papers, vol. 2, pp. 24 to 34, inclusive.)

In October, 1629, Lord George Baltimore went to James city (now Jamestown) in person. See last page of vol. 1st, Henning's Statutes at Large, as to the pilloring of Thom. Tindell for
209 insulting and threatening Lord Baltimore, and the "letter from the commissioners of Virginia to the lords of the privy council" found in S. P. O., Colonial No. 39, Great Britain, announcing Lord Baltimore's arrival in the colony, in the beginning of October, 1629, from New Foundland, and that he was willing to reside with his whole family in Virginia, though his intention was to settle Southward at first; that they were willing to receive and entertain a person of his high rank. Whereupon they tendered the oaths of supremacy and allegiance to his lordship, and some of his followers, who, making profession of the Romish religion, utterly refused to take the same; that his lordship then offered to take "an oath—a copy of which was enclosed—but they strictly exacted the oath required by King James I.; and they implored that no Papists should be suffered to settle their abode in the colony of James city."

By the third charter of the colony, Papists were prohibited from settling in its limits; and the oaths of supremacy and allegiance, which Lord Baltimore declined to take, did drive him to settle North of 38 N. L., the extreme Northern sole limit of the London company by the original grant. As stated, in the paper—"Considerations of Lord Baltimore's Patent," &c., &c.—already referred to, he went to Watkins point, lying on the 38° N. L., on that line where the Western shore boundary, the Potomac, mouthed, and which he represented to be settled by savages, and to be vacant between the Plymouth and London companies. See his own map (Herman's) and Bowen's Map. See also McDonald papers, vol. 6, 38th instruction by the King Charles II. to Lord Culpeper, p. 33 or 35 and p. 132-135. See oaths of supremacy and allegiance changed, Id, vol. 7, pp. 317, 319; alarm about war with France and Indians, and course towards Catholics, pp. 205, 206, 363. But see the British "State Papers," Colonial Entry Book, vol. 52, p. 88-89, August
210 19th, 1682, letter from the king to Lord Baltimore. The line from Watkins point, already settled, 2° N. lat. South of 40° N. L., fixed by the charter for Northern limits and named, 2° measured Southward, gives Lord Baltimore to 38°. See 117 of the Deiarnette papers. This supports Penn's repeated asseveration without contradiction by Lord Baltimore at the time, that he knew

his boundary on the eastern shore did not extend South of 38° N. L. See Dejarnette's papers, Lord Baltimore's own account of his conferences with William Penn. And this line, thus settled, did start almost exactly where 38° was then supposed to be, and ran upon that line, varying from it only the number of degrees (5°) allowed by the law of Virginia, and it was run from one natural object on the bay side of the E. S. peninsula, Watkins point, to another natural object on the sea side thereof—Swansea Gut creek,—"over the Pocomoke river."

Lord Baltimore could not settle South of 38 N. L., without taking the oaths of allegiance and supremacy. See Hen. Statute at Large act 28, 1631-'32, against Catholics; and Id. against Quakers, 1659-'60, 1 H. Stats. at Large, pp. 532, 533.

IV.

The immense territory of the London company was dismembered—

1st. By the grant of Maryland to Cecilius Calvert, Baron of Baltimore, in Ireland, in 1633.

2d. By the grant of North Carolina to the Earl of Clarendon in 1655.

3d. By the grant of Pennsylvania to William Penn, in 1681, and the grant to him of Delaware.

4th. By the treaty between Great Britain and France, called the treaty of Paris, in 1763.

5th. By the constitution of Virginia, June 29th, 1776.

211 6th. By her deed of cession of her Northwestern territory, March 1st, 1784. (See Hubard's Report.)

7th. The compact between her and Maryland in 1785 refers merely to navigation, fisheries and the jurisdiction over criminal offences, and not to boundary.

And of these grants on settling and adjusting the boundaries between Maryland and Virginia, we need look to the Maryland and Pennsylvania grants, to the treaty of Paris, to the first constitution of Virginia, and to the cession of her Northwestern territory by Virginia to the United States. And these are affected materially by the revolution in England in 1649; by the surrender of the colonies of Virginia and Maryland to the commonwealth and to Cromwell; by the grants *ad interim* to Lord Hopton, &c; by the restoration of the proprietary rights of Lord Baltimore by the Charles II. in 1669; by the privation of his charter in 1690 by William and Mary; and by his restoration to his rights in 1715 by George I. Lord Baltimore never had quiet title to Maryland except from 1715 to 1776. But, undoubtedly, at the end of the colonial state of the British colonies in North America, Maryland had a separate and independent existence, as a sovereign state, and the question recurs—What then were her limits? That question we will examine *"in limine."*

V.

Without going into a critical analysis and translation of the charter to Cecelius Calvert—Lord Baltimore—in 1633, it may for the present be conceded, for the argument, that whatever were the

boundaries fixed between the two colonies of Maryland and Virginia by the charter of Charles I. to Lord Baltimore, they were greatly changed by the "articles of surrender of the whole country of both colonies to the commonwealth and Cromwell on the 12th
212 March, 1651."

We have seen that Lord Baltimore's charter or grant was disputed by Virginia at once, and the legal question has never been decided. The grantees of land from Virginia prior to his grant, such as that to Claiborne of Kent Island, disputed his proprietary rights to their lands from the beginning.

In the midst of these controversies, the revolution of 1649 occurred in Great Britain.

The governor, Sir William Berkely, and the council and burgesses of Virginia, were loyal to Charles II. Charles I. was beheaded the 30th January, 1649. From that period the commonwealth in England commenced; and it continued, under different modifications, until the restoration of Charles II. in 1660. Oliver Cromwell was declared protector on the 9th January, 1654, and died on the 13th September, 1658. His son Richard succeeded him, but abdicated in 1659. On the dissolution of the monarchy in England, doubts existed in this country whether the powers of the governor and council, and of all the other officers of the government deriving their appointments from them, were not extinct. This gave rise to one of the provisions of the first acts of the grand assembly held at James City on the 10th October, 1649, which made it highly penal to maintain such doctrine. The principle was, however, solemnly recognized by the first article of the convention entered into between the commissioners of the parliament of England and the governor, council and burgesses of Virginia, on the 12th March, 1651. That convention annihilated the royal government and prerogative in Virginia. See Henning's Statutes at Large, vol. i., p. 358, and see note.

The first act of the assembly after the regicide proclaimed the treason of those who tried and convicted and decapitated the king; asserted the royal government as still continuing and exist-
213 ing; and declared all defenders of the execution of Charles I. accessory to the death of the king after the fact; and to doubt the right of succession of Charles II. was made high treason, and it was made equally high treason to propose a change of government or to doubt the power of the governor and government of Virginia. See Id. pp. 359-60-61.

By act III of this assembly it was

Enacted, That the inhabitants which are or shall be seated on the South side of the Potomac river shall be included, and are hereafter to be accounted within the county of Northumberland.

By the articles "at the surrender of the countrie," agreed on and concluded at James City, in Virginia, for the surrendering and settling of that plantation under the obedience and government of the commonwealth of England, by the commissioners of the council of state, by authority of the parliament of England, and by the grand assembly of the governor, council and burgesses of that "countrye" it was solemnly agreed and concluded—

4th. "That Virginia shall have and enjoy the ancient bounds and

lymitts granted by the charters of the former kings, and that we shall seek a new charter from the parliament to that purpose against any that have intrencht upon the rights thereof." Herein, by a power recognized as sovereign and absolute, both *de jure et de facto,* was all royal gov't, and authority annihilated and the ancient chartered limits of Virginia restored to her. Whether she ever sought a new charter from the parliament or not, the royal grant to Lord Baltimore to any of her chartered limits was annulled by *actual convention and treaty,* higher and more authoritative than any judgment of the king's bench in 1624, which enabled the king to dismember her territory or to "intrench upon it." See 1 Henning Stats. at Large from p. 363 to p. 373, inclusive. Here it is seen that
214 there was an entire revolution of gov't and its powers and authorities; that it was by a rightful and acknowledged gov't, destroying all royal prerogative, and by *treaty* restoring Virginia to all her original territory; and that a provisional gov't was organized for the colony and followed this revolution. Nothing could be more conclusive in political history than that, if king's bench took away the rights of the London company, the commonwealth and Cromwell and their commissioners took away Lord Baltimore's rights as a proprietary gov. of Maryland. The 3d charter of the London company prescribed that the oaths of allegiance and conformity should be taken in Virginia. The king himself could not dispense with them; and Lord Baltimore declined to take them. He evaded them by betaking his settlement to that neutral and common territory between 38° and 40° N. L., lying between the Plymouth and the London co. settlement. These two degrees, embracing about the distance of 100 miles, which the two companies were bound to keep between their settlements. Virginia had already granted patents to numerous settlers who had seated "dividents" in all that region. She had commissioned Wm. Claiborne, a surveyor, and sent him to survey the planters' lands and make a map of the country; to make discoveries along the coast and find a fishery between James river and Cape Cod. He and his followers settled mainly at and near Kent island, high up the Chesapeake bay. The charters had expressly provided "that all the lands were to be had and enjoyed in the country of Virginia by British subjects within the same, according as in the like estates they were had and enjoyed by the laws within the realm of England. The individual titles granted by Virginia before the grant to Lord Baltimore by the king, could not be disturbed by the Maryland charter. They were titles in free, and common socage were vested, and could not be annulled by
215 the king himself. Lord Baltimore invaded or intrenched upon their private titles, and that was the cause of Claiborne's rebellion against Lord Baltimore's proprietary gov't.

The great massacre occurring in 1624, and the London co. being convulsed by violent factions, the charter was annulled by *quo warranto;* Virginia became a royal province, and the company expired just ten years before Lord Baltimore obtained his grant and began to govern Maryland. But by that time Virginia had enacted laws for

the registry of births, marriages, and burials by church ministers and wardens, and there were *parish records.* That was one test of jurisdiction and boundary. In 1634 the country was divided into 8 shires, which were to be governed as the shires in England; their names were James City, Henrico, Charles City, Elizabeth City, Warwick River, Warros Kyoake (now Isle of Wight, &c.), Charles River, Accawmack, and lieutenants were appointed the same as in England; and, as in England, sheriffs were elected, and sheriffs and bailiffs where need required. See I Hennings Stats. at Large, pp. 233-'34. See also a copy of the rolls. Again (as early as 1623-'24,) surveys for private planters' "dividents" were provided for and were to be recorded. See I Hen. S. at Large, p. 125. Edmund Scarborough had been repeatedly elected county lieutenant of Accomack, and was surveyor general of Virginia when the boundary disputes first began between the two colonies. And from the beginning of the London co. colony the established church of England was in full authority in Virginia, and the church divisions into parishes were arranged, and there were then complete records of vestries. Conformity was strictly enforced, and non-conformists were compelled to depart the colony. The laws against Papists and Quakers were severely tyrannical and rigidly executed. All these laws and their effects were so
216 many tests of what settlements and population belonged to Virginia. And thus before the grant to Ld. Baltimore, in 1633, the Virginia colony was completely organized, and its affairs administered in a defined territory. Lord Baltimore disturbed those settlements. At once he assumed to grant and govern the lands of those seated as on Kent island within his admitted limits, denying the prior individual titles under Virginia grants, and he began to seat settlers beyond his limits, especially West of Pocomoke river, near its mouth on the Eastern shore. The reason why the refugees from Virginia took their settlements there, will be shown hereafter.

William Claiborne stubbornly resisted the proprietary claims of Lord Baltimore from 1633 to 1635; driven out of Maryland at last, he escaped to Virginia, but was arrested and sent to England to be tried for rebellion. The provisional legislature of Maryland having declared against the proprietary claims of Lord Baltimore, Claiborne re-appeared in rebellion against Lord Baltimore in 1644, and the latter in turn was obliged to seek refuge in Virginia, and never returned to Maryland until about 1646, when he put down the rebellion and died the next year, His successor remained in *disturbed possession* until 1649, when lo! in 1651, William Claiborne again appeared as one of the commissioners to demand the "surrender of the whole country" to the commonwealth of England in its second year. Not only was Virginia guaranteed "the ancient bounds and limits granted by the charter of former kings", but also that all the patents of land granted under her "collony seal, by any of the preceding governors, shall be and remain in their full force and strength." She was granted free trade and freedom from all taxation.

The commissioners engaged for the parliament and the governor and council and burgesses for the whole colony on their respective

parts. The commissioners of parliament were Richard Ben-
217 nett, William Claiborne and Edmund Curtis. These articles were signed and sealed by the commissioners of the council of state for the commonwealth of England the 12th March, 1651, and they then proceeded from Jamestown forthwith to reduce Maryland, and in 1652 they established for her a provisional government—Bennett, governor, and Claiborne, secretary. From 1652 to 1654 they entrusted the government of that colony to a "Board of Ten". The assembly at Patuxent deprived the Catholics, notwithstanding the "Toleration Act", of all franchises, and a civil war ensued and lasted until the year 1657. It was only by the tact of Fendall that the proprietary government was re-acknowledged as late as 1658. And after Oliver Cromwell's death, the colonial authorities of Maryland herself asserted the supreme authority of the people, and that the allegiance of the colony was due to the king. For these general facts of history, see Holmes' University Series, and No. 142 of the De Jarnette papers—"Lord Baltimore's case uncased." Thus it may well be claimed that the colony of Maryland in turn became an imperial colony by treaty with the commonwealth of England, and that treaty was never disturbed or modified by any absolute act of Oliver Cromwell. If kings bench in 1624 could open the way to dismember Virginia by royal grant to Lord Baltimore—*a fortiori*—the revolution of 1649, and the "surrender of the country" in 1651, and the articles agreed and concluded by the commonwealth's commissioners with governor and council and burgesses of Virginia could restore the latter to her ancient limits—Maryland and Virginia both became imperial provinces of the commonwealth of England, and were both within the prerogative of imperial grant. A consequence of this restoration of the limits of Virginia was, that she deemed herself as having no longer any issue of boundary to settle with Lord Baltimore; and, accordingly, at a grand assembly
218 held at James City, by prorogation from the 10th March, 1655, to the last December, 1656, it was ordered: "That letters be sent unto Col. Samuel Matthews and Mr. Bennett, that in respect the difference between us and the Lord Baltimore, concerning our bounds, is as far from determination as at first, they desist in that particular until further order from this country."

They wisely desisted, knowing, doubtless, that the question of boundary would or could probably be settled without further controversy with Lord Baltimore. And so far as the Potomac and its islands and shores are concerned, its boundary was settled by—

VI.

The Grant of the Northern Neck of the Colony of Virginia, Lying Between Rappahannock and Potomac Rivers.

A petition dated July 28th, 1639, addressed to the lord's commissioners for foreign plantations, by the governor and company of London for the plantation of the Somer isles—now Bermuda isles—see map of 1763, (see No. 56, State papers, colonial, vol. 10, No. 30, with inclosure—shows that company was incorporated about the

year 1621, and the inhabitants were not able to subsist there, and sought another place. That an agreement had been made between the company of Virginia and the petitioners, when the latter purchased the Somer isles from the former; that the petitioners should receive a large proportion of land in Virginia, and they prayed for a grant of land situate and being betwixt the two rivers of Rappahannock and Patowmeck.

This petition shows that the Northern Neck, as it is now called, was not then inhabited by English subjects, and that no grant thereof "had yet passed to any." This, with the inclosed paper, was submitted to the lords commissioners on the 1st August
219 A. D. 1639.

Then, August 3rd, 1663, came a letter from Charles II. to the governor and council of Virginia, reciting that he had granted to Henry Lord Jermine, Earl of St. Albans, and to Ralph Lord Hopton and others, in the first year of his reign, (he never counted the years of the commonwealth of Cromwell, and therefore he meant 1649, '50, or '50, '51.) "all that tract, territory or portion of land in America, bounded by and within the heads of Tappahannocke alias Rappahannock and Quiriough or Potomac rivers, the courses of these rivers, and Chesapeake bay, together with the rivers themselves, and all the islands within the banks of the said rivers." And it recites that the Earl of St. Albans, Lord Berkeley, Sir Wm. Morton and John Fritheroy, assignees of the said Lord Hopton, being the surviving patentees and parties interested, had granted and demised to Sir Humphrey Hoke, Knt., and others, the said tract, or territory, for a certain number of years, &c., &c.; and reciting that his letters patent had miscarried, and ordering the governor, council and burgesses of Virginia to give these patentees aid and assistance. See the De Jarnette State papers, No. 80, Colonial-Virginia, 59, No. 19, August 3rd, 1663.

And in the Public Record Office of England, Chancery Patent Roll 21, Car, II., dated May 8th, 1667, came the patent or grant from Charles II., confirming "letters patent under the great seale of England, bearing date at St. Germines, the 18th day of September, in the first year of our reigne," unto Ralph Lord Hopton, Henry, Earl of St. Albans, &c., &c., their heirs and assignees forever, all that entire tract, territory or parcell of land, situate, lying and being in America, and bounded by and within the head of the rivers of Tappahannock, alias Rappahannock and Quiriough or
220 Pattawmack rivers, the courses of the said rivers as they are commonly called or knowne by the inhabitants and description of those parts and Chesapeake bay, together with the rivers themselves. And all the islands within the banks of those rivers. And all the woods, &c. This recites the terms of the grant to Lord Hopton made in the 1st year of Chs. II. reign, in 1651, and them recites that whereas the said Ralph Lord Hopton, John Lord Culpeper, Sir Dudley Wyatt and Thomas Culpeper, being all since dead, and the said Ralph Lord Hopton having in his life time, by good and sufficient conveyance and assurance in the law convied and assured all his estate and interest in the said p'messes unto

John Fretheroy, Esq., and his heirs, all the said tract, territory, and portion of land," &c.

"And whereas the said Henry Earle of St. Albans, &c., by their deed, &c., bearing date the nyne and twentieth day of June now last past, &c., have granted and surrendered to us the said tract, &c., with the aforesaid letters, patents to be cancelled, to the intent that we would be gratiously pleased to grante them new letters patents thereof, &c., &c.: Now know ye, that we for, &c., have granted and confirmed, &c., unto the said Earle of St. Albans, John Lord Berkeley, Sir William Morton, John Fretheroy, their heirs, &c., all that entire tract, territory or parcel of land, situate, lying and being in America, and bounded by and within the head of the rivers of Tappahannock alias Rappahannock and Quiriough alias Pawtamack river—courses of said rivers, &c., together with all the rivers themselves and all the islands within the banks of those rivers, &c."

And after full and complete proprietary rights and powers are granted, and a covenant to supply all future defects, it proceeds:

"Provided always, &c., that these presents or anything
221 herein, &c., shall not extend or be construed to extend to infringing, make voyd, or otherwise prejudice any contracts or grants, &c., whatever, heretofore made, or granted by the governor or governors and council of Virginia, of the premises, &c., &c., made before the 29th day of September, in the 13th year of our reigne."

And these grantees were prohibited from acting or intermeddling in the military affairs or forces in the territory, "or with the government or command of any of the castles, forts, &c., thereof, without the order, authority and command of the governor and council of Virginia for the time being, but the same shall remain, continue and be in the governor and council of Virginia, &c.; and that the governor, councill and assembly of Virginia for the tyme being shall have full power and authority to lay any tax and impositions in and upon the said territories hereby granted."

In a word, these grantees and the inhabitants in this territory were "in all things made subject and obedient to such lawes and constitutions as are or shall be made by the said governor, council and assembly for or concerning the said colony or gov't thereof," &c.

This grant was made by writt of privy seal, at Westminster the 8th day of May, the one and twentieth year of the reign of Charles II, counting from the death of Charles I would be 1668-69. Also see No. 94 of the de Jarnette papers, dated "At Whitehall," November 19th, 1675.

"Present: The king's most excellent majestie in councill."

The lords of the committee on foreign plantations presented to his majesty in council a report touching a grant to be past
222 unto his majesty's subjects of Virginia. The petition of Francis Morryson and others, agents for the governor, council and burgesses of the country of Virginia and territory of Accomac.

The report of the committee approved the petition, and it was con-

firmed by the king in council, November 19th, 1675, authorizing the governor, council and commonalty of Virginia, to purchase the lands, &c., contained in grant to the Earl of St. Albans, &c. &c.

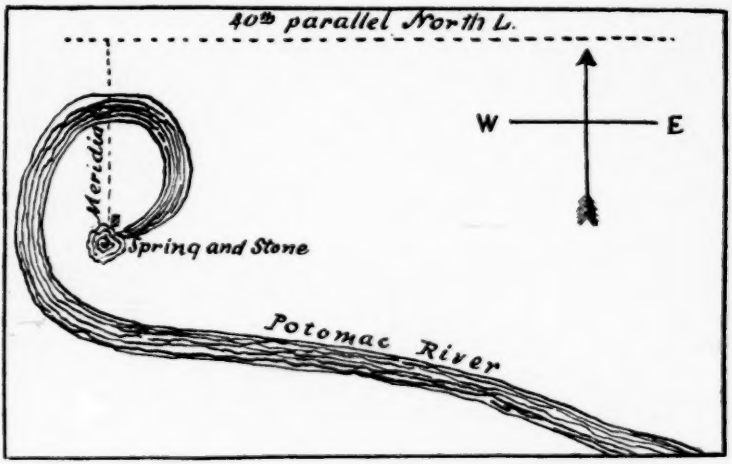
Under these and various other papers, and laws passed to that end, the colony of Virginia became possessed of the entire territory between the Rappahannock and Potomac rivers, embracing all the islands and waters of said rivers, and has ever since exercised juris- over the same.

Not only by successful revolution and sovereign power, *de jure et de facto,* was Virginia, by the treaty-making power itself, restored to her ancient limits, but her boundary and jurisdiction on the Potomac river was fixed by royal grant as well as by the articles of surrender to the commonwealth.

Lord Fairfax fixed the initial mark of boundary at the head spring of the North branch of the Potomac under his title, and prevailed against the lord proprietor of Baltimore, who claimed not only the whole of the Northern Neck of Virginia, but to the South bank of Acquia creek. See the map of his own "achievement," with his coat of arms, in Ogleby's History. And Lord Fairfax, under Virginia laws, always claimed the Potomac river and its islands, and Virginia always exercised jurisdiction in various ways over them, as will be hereafter shown. See the surveys by Lord Fairfax, hereto appended.

Indeed, it was always a matter of dispute whether the original grant to Lord Baltimore could reach as far West as the head spring of either branch of the present Potomac. The river to which
223 the name of Potomac was given was the Quiriough. That river, at the date of the grant to Lord Baltimore in 1633, was not known higher up than its falls; and the country West of the Blue Ridge was not explored, certainly not settled, for a century after that date. See Kercheval's History of the Valley of Virginia. The North branch of the Quiriough was the Cohongaroota, and the South branch was called the Wapopocomo. If the name Potomac in the Baltimore grant meant the Quiriough, as undoubtedly it did (see the alias named in the grant to Lord Hopton), then the line of Maryland running by the line of 40° N. L. until it came to the meridian of the most Western head spring of the Quiriough would have to stop far East of the meridian of the head spring of the Cohongaroota. But Lord Fairfax and Lord Baltimore fixed the boundary by the Fairfax stone, as found by Michler. And Michler's report showed a curious result of survey in demonstrating, perhaps, what the words "*ulteriorum, flumines, ripam,*" in Baltimore's grant, meant. Michler, in making his survey, could not of course begin to run a line South from the parallel of 40° N. L., until he first found the head spring, the meridian of which he was to run. He searched for and found the spring and stone marked by the Fairfax initials, and then run its meridianal line North until he crossed or came to the parallel of 40° N. L. In doing so he found that within four or five thousand yards North of the stone and spring his meridian line struck the Potomac river, there running Northwest. Instead of running South from the parallel of 40° to the spring, he

was running North from the spring to the parallel—exactly the reverse of the course required by the grant. The grantor, as it were, standing on the parallel of 40°, gave a line inclining South from the meridian of the spring to the ulterior bank of the river from his stand-point on the parallel. The river running there North-
224 west and then deflecting West and South until it takes its general course Southeast, the ulterior bank of the river was, geographically, the left bank thereof. The line thus mathematically was fixed on the North side of the Potomac. Any one can see this by the simplest diagram, thus



The ulterior bank of the river is the South side where the meridian of the spring cuts it, but it is the North side in the general course of the river. But the reply to that is, that the line was to run to Cinquack, and Cinquack is placed on Smith's Map on the South side of the river. What did Cinquack mean? A point of place, a wigwam, a chief's residence, or a territory? Certain it is that by the charter the line of the Western shore of the bay was to terminate where the river disembogues into the bay, and there is no place on Smith's Map called Cinquack there. The name Cinquack is put on Smith's Map at or near the mouth of the
225 Great Wicommico, some five or ten miles South of the mouth of the Potomac river, or South of where it disembogues into the bay. Again, we know that Smith misnamed several rivers and places, as for example he called the Pocomoke the Wycho on the Eastern shore (see record of Accomac county court in 1663, as to the true Pocomoke and Calvert and Scarbrough's report in 1668, showing where the Pocomoke was known to be in that day.) But this is all mere curious speculation now, for whatever was the Potomac line under the grant to Lord Baltimore in 1633, it was changed by the surrender of the country in 1651, and the grant of Charles II. the same year confirmed, in 1668–'9, to Lord Hopton and others.

It was changed, if ever on the South side, to the North side of the Potomac by the most plenary power of both the commonwealth and the crown. At first the line on the Western shore may have terminated on the South headline of the Potomac where it disembogues into the bay; but after the restoration of Charles II., it terminated on the North headland of that river at the extreme Southeastern angle of Point Lookout. And this change, as will be shown hereafter, is still shown and proved by marks and monuments remaining yet on Smiths island in the Chesapeake bay. See depositions as to them.

VII.

And this brings us to enquire: how, when and by what modifications of his old charter, or by what new charters, if any, was Lord Baltimore restored to his rights? He was certainly more than suspected by Charles Second of disloyalty to the crown, and that was certainly cause of forfeiture of any royal grant to him. See No. 142 De Jarnette papers.

The commonwealth had deprived him of the whole of his power and province, and restored it to the colony of Virginia. How
226 much did the grace, mere grace of majesty restore to him? If his corporation was gone, did he have anything left but mere proprietary individual rights? He had to be restored to something. To what was he restored? It is utterly denied that the grant to Lord Hopton expressly placed under the colonial jurisdiction of Virginia by charter, was undisturbed by *"quo warranto,"* or by king's bench, or by king. It remains unimpeached to this day, and is binding upon both states. It is insisted that he was given back, and could be given back the parts of his original limits so far on the Western shore as to the North bank of the Potomac. The king, whilst Lord Baltimore's title was taken away under the sovereignty of the com'th, and Maryland was therefore under royal grant, gave the river Potomac, under the great seal of England, to Lord Hopton and gov'r and council and burgesses of Virginia. Nothing could undo that grant but the king's bench. The king, after the grant, could not of his own motion revoke it by giving it to another without the judgment of that court. Did the King Charles II. impose new conditions or new limits upon Lord Baltimore's grants? It is insisted he might do so, and even if that be an error of opinion, and the king might not be able to do so without his consent, yet did he consent and take anew by his acceptance of any new terms, conditions and limits? If so, what?

We know that Lord Baltimore's grant was lawfully modified to a great extent, but how far, with his own consent, we are not informed. However that may be, and whether the onus of showing belonged to Maryland or Virginia, is not material, for we know—

VIII.

There has been a controversy respecting the boundary of the two colonies; and, in 1663, it was brought to a specific and pointed issue.

The laws of conformity had pressed so hard in Virginia upon
227 the Quakers and other non-conformists that they were driven on the Eastern shore, then called Accomack, to the North and West of the mouth of the Pocomoke. A glance at the map will show that river runs from the N. E. of the peninsula until it comes near to its mouth East of Cedar straits, and then it suddenly widens into a sound of considerable width; and the part of its North bank embraced by the lands of Little Annamessex river, between that and the Pocomoke sound, consists mainly of salt marshes, not then desirable for settlement, and then not easily accessible from Accomack. Being tolerated in Maryland, and not in Virginia, the refugees from Accomack congregated in the Little and Big Annamessex *territories* up to Marokin river. But 8 square miles of this territory claimed by Virginia was *terra firma* or arrable land, and it was inconvenient to be visited by any sheriff of Va. to collect taxes, or for any other purpose. Lord Baltimore's deputies, seeing this, began to encourage this settlement and to grant patents in that region. No patents were sought by these refugees East of the Pocomoke river, and thus on that side of the river no dispute arose after the year 1668 about boundary. Edmund Scarbrough, the surveyor gen'l of Va. in Accomack, was, with others, employed by the lord proprietor of Maryland to conduct settlements to the Annamessex rivers. Finding that he was aiding to strip his own colony of her territory, and that his employment by Maryland was incompatible with his official duty to Virginia, he exposed the policy of Lord Baltimore to acquire that territory by settlement, and caused the final adjustment in 1668. See the Maryland records: 1st one labelled No 3 state papers, council record book 1666–'68; 2d. The other labelled No 4 state papers, council record book 1669, 1673.

These books, with others of the archives of Maryland, are
228 now in the safe-keeping of the Maryland historical society in Baltimore, and were adduced by the commissioners on the part of Maryland.

The first shows the disturbances about settlements on the Eastern shore of Chesapeake bay, and the correspondence of the governments of the two colonies respecting boundaries and the encroachments of settlements.

The second shows a full and final settlement of the whole question of boundary and patents on the Eastern shore, at Big and Little Annamessex rivers and Pocomoke sound, and thence to the Atlantic ocean by a right line East.

Edmund Scarbrough was a man of great ability and energy; was a man of large means, being a considerable patentee from Virginia, and perhaps Maryland, too, and had actually been in Lord Baltimore's service, employed by him with others to cause the refugees and others from Virginia to settle down as low as Little Annamessex; but Scarbrough found the settlers under the lord and proprietary of Maryland encroaching on the territory of the colony of Virginia, of which he was surveyor general, on the Eastern shore of Virginia, from the Wicommico river North to the Pocomoke sound South. This caused the collisions between him and Mr. John

Elzey in 1663, and the correspondence between the governors of Maryland and Virginia. Maryland sent commissioners to James City to confer on the matter and to adjust it. The 9th act of the general assembly of Virginia in 1662, was "to prevent assemblies and conventicles of Quakers," &c. The 68th, 69th and 70th of the same year, provided for—1st, grants of land; 2dly, deserted land; and 3dly, seating of lands; which explains the reason of patents for the same lands to different persons. Act 78th of the same year provided for what was afterwards called processioning of lands; to be done by view of certain select neighbors of the boundaries.

229 There were no neighbors at Annamessex *loyal to Virginia*, West of Pocomoke. They all claimed the protection of Lord Baltimore against the intolerance of the established church in Virginia. For this reason there could be no processing in all Annamessex. But the refugees never settled East of the Pocomoke, because it brought them in the neighborhood of their persecutors, and accordingly three loyal neighbors could be selected who were willing to do the marking and remarking boundaries East of the Pocomoke. Thus there was no processioning on the West, whilst it was regular on the East side of that river. This left the way open to the encroachments of Maryland settlers.

This assemblage of Quakers and other refugees from Virginia, in Annamessex, and controversy respecting encroachments on the limits of the Virginia colony, caused the grand assembly held at James City, September 10th, 1663, 15th year of Charles II., to pass act 2d, "an act concerning the bounds of this colony on the Eastern shore:" "His Majesty's interests on the Eastern shore of Virginia, together with some concernments of Lord Baltimore's, coming into consideration of the right hon. governor and council and burgesses of this grand assembly, they, pretermitting for the present some other of his majestie's concerns of lands until a fitter opportunity, do think fit for the present to enact, and be it further enacted, by the said right honorable, the governor, council and burgesses of this grand assembly, and the authority thereof, that publication be made as soon as possible by Col. Edmund Scarbrough, his majesty's surveyor general in Virginia, commanding, in his majesty's name, all his inhabitants of the Eastern shore of Virginia, from Watkins point Southward, to render obedience to his majesty's government of Virginia, and make payment of his majesty's rents and all publick dues to his majestie's colony of Virginia.

230 "And whereas it has been controverted by some ignorant, ill disposed persons where Watkins point, the Lord Baltimore's Southernmost bounds on the Eastern shore, is situated, this grand assembly, by the care and special enquiry of five able selected surveyors and two burgesses, and on the due examination thereof, conclude the same place of Watkins point to be the North side of Wicocommico river on the Eastern shore, and near unto and on the South side of the straight Limbo, opposite to Patuxent river; which place, according to Captain John Smith and discoverers with him in the year 1608, was so named, being the said Lord Baltimore's bounds on the Eastern shore, within which bounds his majestie's

subjects which now are seated, are hereby commanded to yield due obedience at their perils. And in case the said Lord Baltimore's lieutenants or deputies shall not be fully convinced of his or their actual or pretended intrusions, this grand assembly of Virginia, in due obedience, making this particular part of Virginia their present care on his majestie's behalf, do engage and command Col. Edmund Scarbrough, Mr. John Catlett and Mr. Richard Lawrence, or any two of them, whereof his majestie's surveyor general to be one, that upon convenient notice and assignment of time and place, at Monnokin or any other part of his majestie's country of Virginia on the Eastern shore, they or any two of them as aforesaid, shall give a meeting to the Lord Baltimore's lieutenants or deputies, or his or their substitutes as aforesaid, the account whereof to be returned to his majestie's governor and council of Virginia for debate and determination thereof. And in the meantime, all inhabitants on the Eastern shore as aforesaid are required, in his majesty's name, to conform due obedience to this act of assembly.

"Be it also enacted, That the surveyor general of Virginia aforesaid is hereby commanded and authorized to improve his
231 best abilities in all other of his majesty's concerns of land relating to Virginia, especially that to the Northward of forty degrees of latitude, being the utmost bounds of the said Lord Baltimore's grant, and to give an account of his proceedings therein to the right honorable governor and council of Virginia."

This act brings us to consider the charter to Lord Baltimore in order to explain why Virginia claimed as high up the bay as near to the Patuxent. That charter as read inattentively calls for a "Watkins point with a Wycho river on the West."

Edmund Scarbrough executed this law with "fourty horse" taken with him "for pomp of safety." See his report hereto appended, characteristic alike of the man, of the times, of the people of Annamessex, and of the nature of the controversy. It brought him into collision with Elzey and others, and he put the "Broad arrow" over their doors.

More patents than ever, began to issue from Lord Baltimore to settlers as low down as Pocomoke sound, and the court of Accomack took up the issue and vouched that the Pocomoke was not the Wycho and never had been so called. And they were right. See Augustine Herman's Map. It was urged by Virginia that if that river was the Wycho, it had no Watkins point on the East of it, and if there was a Watkins point on the East of it, it was not the Wycho. See the records of the court of Accomack appended to Scarbrough's report.

The description in the affidavits of this record of Watkins point exactly corresponds with the initial point adopted afterwards by Scarbrough and Calvert. It is just as far North of Cedar straits as the eye can see in a clear day—a *"spiral point;"* but to understand this part of the line we must refer to

232

IX.

The Charter of Maryland.

In the British State Papers, colonial, vol. 43, No. 240, is a "memorandum concerning Maryland. It describes Virginia as a tract of land lying from 45 to 34 degrees N. L.—that it was divided into two colonies, the one lying from 34 to 40 degrees, the other from 40 to 45 degrees, and it proceeds to state, that in 1632, "Cecil, Lord Baltimore, upon suggestions that there was a certain tract of land in America not inhabited by christians, (as appears by the preamble) obtained that charter whereby Maryland is now held, and for the possessing himself thereof used great violence in driving away such of the people out of that part formerly called Virginia, as would not submit to his authority, &c. See De Jarnette papers, No. 137. This confirms the paper already cited, headed "Considerations, &c.," of Lord Baltimore's patent, which states that he did represent to the king that the country was settled by *sl*avages—the country of the 100 miles apart between the Plymouth and the London Co. settlements, between 38° and 40° N. Lat. He obtained his charter and the territory is described by the following, and what seems to be the best translation of it:

"All that part of the peninsula or chersonese lying in the parts of America between the ocean on the East and the bay of Chesapeake on the West, divided from the residue of the same by a right line drawn from the promontory or headland called Watkins point, situated near the bay aforesaid, near the river of Wigheo in the West, unto the great ocean on the East, and between that boundary on the South, unto that part of the estuary of Delaware on the North, which lieth under the 40th degree of latitude North
233 of the equinoctial, where New England is terminated; and all the tract of that land within the metes underwritten, (to wit,) passing from said estuary called Delaware in a right line by the degree aforesaid, unto the true meridian of the first fountain of Potomack, thence verging towards the South, to the further bank of the said river, and following it by the Western edge where that looks to, or (inclines to) the South, unto a certain place called Cinquack, situated near the mouth of the same river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called "Watkins point."

On the words of this grant it will be observed,

1. It provides for the boundaries on the Eastern shore of the Chesapeake.

2. For those on the Western shore of that bay and for the closing line between the E. and W. shore.

3. The part granted was to be divided from the residue of the peninsula by *a right line.*

4. That line was to be drawn *from* the *promontory* or *headland called Watkins' point.*

5th. That point was situated near the bay aforesaid (near the river of Wigheo or Wycho) on the West.

6th. The *right line* thus drawn from that promontory on the West was to run "unto the great ocean, the Atlantic, on the East."

7th. That line thus run was to be the Southern boundary of the grants to Lord Baltimore on the Eastern peninsula or chersonese of the Chesapeake.

A dispute arose about where the true Watkins point was, which culminated in the act of Virginia of 1663, the appointment of five surveyors and two burgesses, with the surveyor general at
234 their head, to demand obedience to the royal government of Va. as high up as the Limbo (meaning strait) now called Hooper's straits, to the only promontory on or near a river Wighco on the Western side of the Eastern shore.

Smith mistook the Pocomoke for the Wighco, and why? Because, as his map shows, he thought he found King Wighcocomoco's house on its bank, and it was his wont in many instances to name the great waters, such as bays and rivers, after their kings. King Chesapeack, at the site of what is now called Hampton Roads, in Princess Anne co., Virginia, gave the name to the bay. Powhatan, high up the James, to that river. Smith gave the name of King Patowomeck to what is well known to have been called by the Indians the Quiriough. It was for that reason that the maps which Lord Baltimore caused to be "achieved" for Ogilby's History and Herman's Map, which he vouched to be accurate, have his bounds dotted on the South side of Acquia creek, it being what *Smith* called the Quiriough. Smith laying that branch down as the "Quiriough" and the "Quiriough" being what was called and meant by Potomac, he claimed South to the head of the branch now coming from the West and emptying into the Southern bend of the Angemoy reach of the Potomac river. See Nos. 96 A and 96 A of the De Jarnette papers Ogilby's History and Map of Maryland, and also Augustine Herman's Map. There is also the Susquehanaugh, which Smith named after its king. Thus from the head to the mouth of the bay the principal rivers and bay itself were named by this first explorer after the names of the chief Indian kings. But Smith called several rivers and points by English names, as Gunters Harbour, Smiths sales, Peregryns mt., at the head of the bay, Willowbys river, Smalls point, Sparkes point, on the Western shore North of the Potomac river, and Barnes point Winstons isles, Mumfords point, Russels isles, Limbo, Watkins point, Keals hill, on the Eastern shore.
235 Four of the points on the Eastern shore were named after four of his men on the expedition, two, we are told, were North of the Limbo (Hoopers straits), and two, Watkins and Reades points, were South of that strait. He lays down both of these points South of Limbo, and neither as a mathematical point made by the extreme of a neck or promontory or tongue of land, but both as a neck or promontory or headland or tongue of land projecting for some distance into the waters where they lie from the mainland. He lays down Reades point or promontory or neck on what he calls the Wighco, at its mouth, where it disembogues into its sound. Watkins point he lays down on the neck or tongue or geographical point found between what is called Big Annamessex and the Poco-

moke bay or sound. Maryland claimed to go to the extreme of the point South, because it was on the Wighco. Virginia claimed that it was on the Wighco, but the Pocomoke was not the Wighco; but that the Wighco was further North, where it is now acknowledged and laid down on all the maps. Maryland argued whether the Pocomoke is the Wighco or not, there, identically, on the Pocomoke for the Wighco, or on the Wighco for the Pocomoke, Smith laid down a place which he called by an English name, and he could not mistake about that name however he may have mistaken the Pocomoke for the Wighco or any other Indian names. He named that name himself. To this, Virginia replied: two natural objects are named as guides of the location of both—a Watkins point near a *river Wighco* on the West. If the Pocomoke had a Watkins point near it, the Watkins point there had no Wighco near it, and the river was the major natural object to control bounds. She knew there was a Wighco and but one Wighco river on the peninsula, east of the bay, though there are several Wighcos on the Western shore.

236 The Wicocommico, emptying into Monie bay (mouthing near Nantiquack, now Nanticoke river), true had no Watkins point on it, but no Watkins point laid down by Smith had any Wighco near it. The Wicocomoco, mouthing through the Limbo, was nearer to Mumfords point. On this ground Virginia sent her Scarbrough expedition to the disputed territory in Annamessex in 1663, and to show how Smith mistook Indian names or misapplied them, he called the river mouthing at Mumfords point the "Rapahannock river," when no such name was ever known at all by the English settlers at any time on the Eastern shore of the Chesapeake. But there is one error apparent in the map of Smith, which trigonometry and astronomy detect. His parallels of latitude are laid down not less than 20 miles too far South. All the Russell isles are placed North of 38° N. L., and Watkins point is laid down North of that parallel too. Would Maryland consent to run a line to any point North of that parallel then or now? We will see what her response to that question was in several instances. Lord Baltimore had consented and acknowledged to the parallel of 38° as his true Eastern shore boundary on the South. See his answer as to his bounds, adopting Augustine Herman's Map, which, it is believed is the original of Ogilby's Map, furnished by Lord Baltimore himself, having his coat of arms printed on it, and said to be his own achievement on its face. If Maryland goes by the map of Smith, she will not reach the 38th parallel; if she goes by Herman's Map, she will be exactly on that parallel on the Eastern shore. But it is idle to be exposing this confusion from early maps, or this conflict of claiming the Watkins point by Smith and the parallel by Herman, when both were wrong, and when the 38th parallel divides the mouth of the Potomac exactly, and is the exact equipotent of the line which was run by the colonies in five years from these disputes of 1663, and this brings us to—

237 X.

The Line Run by Philip Calvert and Edmund Scarbrough in the year 1668.

The lord lieut. of Maryland continued to grant patents just at this time from 1662, and the colony of Virginia being resolved to bring the inhabitants of the disputed territory into subjection and obedience, and they being refugees from intolerance, and dreading to come again under the oppression from which they had fled for the sake of religious freedom, danger of a serious collision between the Royal Government of Virginia and the settlers on the Annamessex lands became so threatening, that the governor of Maryland invoked the co-operation of the authorities of Virginia, and sent an embassy to James City to complain of wrongs, and to arrange some mode of adjusting and settling the whole controversy in respect to boundary and titles to lands. In book of MS. labelled "No. 3, State papers, Council Record Book," dated from 1656 to *to* 1668, of the Maryland archives, the preliminary correspondence and proceedings will be found. The result was that Philip Calvert, the nephew of Lord Baltimore and the Chancellor of Maryland, on the part of Maryland, and Edmund Scarbrough, surveyor general of Virginia on the part of Virginia, were appointed commissioners to settle the whole question. They were instructed to "*meet upon the place called Watkins point, and thence to run a divisional line to the ocean sea, &c.*" This instruction they obeyed, and on the 25th day of June, 1668, they made their report under their hands and seals. They reported:

1st. *That after a full and perfect view taken of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay*, they have, and do conclude the same to be Watkins point, from which said point, so called, we have run
238 an East line agreeable with the extremest part of the Westermost angle of the said Watkins point, *over Pocomoke river*, to the land near Robert Holstens, and there have marked certain trees which are so continued by an East line running over Swanseacute creek into the marsh of the sea side, with apparent marks and boundaries, which by our mutual agreement according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay." And there is no doubt, and it is now admitted by the present commissioners of Maryland, who have acted as commissioners on these bounds heretofore, that these articles of agreement, and this settlement of boundary, as reported, were approved and confirmed by Lord Baltimore, and they certainly were by the State of Virginia. And though the line was thus definitely and distinctly marked and acquiesced in and recognized from 1668, and had been known by its apparent marks, which still exist, and have existed for 184 years, yet, as soon as the oyster fisheries became valuable and began to yield revenue to the state having jurisdiction over them, the county authorities of the state of Maryland on the Eastern shore began to encroach first upon the territory of Smiths

island, and then upon the waters of Tangier sound. See Bradshaw's deposition. And though the question has been since settled by adjudications in the courts of Somerset county, Maryland, as late as 1854, in favor of the line claimed by Virginia, (see records of Somerset county Maryland court,) yet Maryland still persists in claiming territory and waters far South of the line established in 1668, on the joint and sealed and confirmed agreement of the commissioners Calvert and Scarbrough. It is inconceivable how the boundary line on the East side of the Chesapeake bay, between Maryland and Virginia, thus and then established, can be disputed or doubted.

1st. By the original grant of the Province of Maryland
239 the *line on the Eastern shore was to be a right line.*

2d. That right line was to be drawn from "the promontory or *head* land called Watkins point, situate upon the bay aforesaid," (the bay of Chesapeake,) near the river Wigheo on the West, unto the main ocean on the East.

XI.

The articles of agreement between Philip Calvert and Edmund Scarbrough show—

1st. That they were men of considerable rank, and both high officials of their respective provinces. The one, chancellor of Maryland, and the other his majesty's surveyor-general of Virginia.

2nd. That each of them were acting under full authority, the one "deputed" by the hon. the governor of the province of Maryland to *treat* and *conclude* upon the bounds of the said province," and the other authorized and *commanded* to lay out the bounds of Virginia.

3d. That in order to enable the Surveyor-General of Virginia to execute the commands of his Royal Majesties' commission to him "setting out the bounds of Virginia, with a reference to his majesty's honorable governor and council of Virginia, his majesty's honorable governor and council had by letter moved the honorable Lord Baltimore's lieutenant-general of Maryland, to appoint some fitting person to meet upon the place called *Watkins point* with the surveyor-general of Virginia.

4th. And thence to run the divisional line to the ocean sea, &c.

Such were their full powers, and such their clearly expressed instructions. They were "to meet together *upon the place called* Watkins point and *thence* to run the divisional line to the
240 ocean."

What did they do? Their report clearly shows:

1st. "That the honorable Philip Calvert, Esq., chancellor of Maryland, being fully empowered by the honorable lieutenant-general of Maryland, and Edmund Scarbrough, his majesty's surveyor-general of Virginia, first took a *full and perfect view* of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay."

2nd. "That they concluded the same to be Watkins point."

3rd. That from said point so-called, they *had run* an East line.

4th. That "they had run an East line from that point" agreeable

with the extremest part of the Westernmost angle of said Watkins point.

5th. That they run said East line from the extremest part of the Westernmost angle of Watkins point "*over Pocomoke river,*" not up it and then to either bank, but *over it.*

6th. That they run this East line from said point "to the land near Robert Holston's."

7th. That there, near Robert Holston's, they had *marked certain trees.*

8th. That they had so "continued their marks by an East line."

9th. "Running over Swanseacute (Swanseagut it ought to be) creek into the marsh of the sea side."

10th. "With apparent marks and boundaries."

11th. "Which line, by their mutual agreement, according to the qualifications aforesaid, was to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay."

241 12th. And "in confirmation of their concurrence" they conclude by adding "we have set to our *hands and seals,* this 25th day of June, 1668."

(Signed) PHILIP CALVERT. [SEAL.]
EDMUND SCARBROUGH. [SEAL.]

And these bounds by this East line from Watkins point, thus ascertained, and the very part of an angle of it specified, from which the line was run to the ocean sea, was received by both provinces at the time, and ever since until lately, as the bounds of Virginia and Maryland on the Eastern shore of the Chesapeake bay. The archives of Maryland and her Somerset and Worcester county records show it, and her best historians attest it. McMahon, in his history of Maryland, after relating the disturbances between the two provinces about settlements on the Eastern shore (vol. i., pp. 20-21, edition of 1831, by Lucas, &c.), says:

"The entreaties and remonstrances of the former (the governor of Maryland) were at last crowned with success, and commissioners were appointed—viz: Philip Calvert on the part of Maryland, and on the part of Virginia, its surveyor-general, Edmund Scarbrough, who were empowered to determine the location of Watkins point, and to mark the boundary line between the two colonies running thence to the ocean. By them this duty was fully discharged on the 25th June, 1668, and in consummation of it certain articles of agreement were drawn up and signed by each of them, on behalf of their respective governments. In one of which they designate the point of land made by the North side of Pocomoke bay and the South side of Annamessex bay as 'Watkins point,' and the divisional line between the two colonies to be an East line run agreeably with the extremest part of the Westermost angle of said Watkins point over Pocomoke river, and thence over Swanseacute creek into the marsh of the seaside, with apparent marks and boundaries."

242 *Again:* John Kilty, register of the land office for the Western shore of the state of Maryland, and author of a book entitled "Landholders' Assistant and Land Guide," being an exposition

of original titles, &c., published by G. Dobbin & Murphy at Baltimore in 1808, p. 164, says:

"The proprietary governor, claiming the beginning of his patent where it was afterwards acknowledged to be, and finding that settlements *had been commenced in that quarter under the authority of Virginia,* commissioned John Elzey and two other persons to repair to the place and grant warrants, under particular and favorable conditions, to such as would take them. On the arrival of these commissioners and notice of their errand, a demand was made by Edmund Scarbrough, surveyor-general of Virginia, that they should acknowledge obedience to his majesty as being out of Lord Baltimore's jurisdiction, and he proposed at the same time the appointment of commissioners to determine the situation of Watkins point. Elzey and his associates paid no regard to this proposition, but continued to fulfil *the views of the proprietary by encouraging surveys and settlements under his patronage.* The dispute was at length terminated by Philip Calvert, chancellor of Maryland, and the abovenamed Edmund Scarbrough, appointed commissioners for the purpose, who, on the 25th June, 1668, being *met on the spot,* signed two instruments of agreement, by one of which they determined the point of land made by the North side of Pocomoke bay and South side of Annamessex bay to be Watkins point intended in Lord Baltimore's charter, and the proper divisional line between Maryland and Virginia to be an East line run by them 'agreeably with the extremest part of the Westernmost angle of the said Watkins point over Pocomoke river to the land near Robert Holston's where, say the commissioners, 'we have marked certain trees, which are so
243 continued by an East line running over Swanseacute creek into the marsh of the sea side, with apparent marks and boundaries.' By the other instrument they adjusted everything that concerned the rights and interests of those patentees or settlers whose situations were changed by the settlement of said divisional line."

Thus what Calvert and Scarbrough said and did A. D. 1668, Maryland's own register of original land-titles, vouched and admitted in 1808, and one of Maryland's brightest jewels, as well as jurists, John V. L. McMahon, of the Baltimore bar, among the most illustrious, vouched as late as 1831, just before or about the time when the dredging for oysters became so valuable as to make the Annamessex people begin to doubt, and start new and old traditions about "where is Watkins' point;" and it must be remembered, too, that while McMahon admitted that Watkins point was finally and fully ascertained in 1668, and that an East line was run then from a defined and specified part thereof on the Eastern shore to the ocean, there was not a son of Maryland who opposed the claim of Virginia to the North shore or bank of the Potomac river on the Western shore with more zeal and knowledge than he did. He was exceedingly jealous of Maryland's rights, was devoted to the religion of her founders, familiar with her archives, a master of her laws, and her strong and eloquent champion of boundaries. He had questioned every inch of land, water and argument claiming them

on the Potomac, but he was too fair and candid an historian to contradict Maryland's own acts and records respecting the Eastern shore boundary.

See also McMahon's Maryland, page 91, touching the bounds of Somerset county, Maryland. See also Bosman's History of Maryland, vol. 1, pp. 247-8-9, and note and p. 262. There could
244 not be a report of commissioners on any survey more in obedience to the requirements of the case, more in conformity to the instructions of the joint authorities under which they acted and more exact in defining every particular of their initial point, of the points passed in right line from that to the extreme shore of the East, of the natural objects it touched, and its place of terminus. See De Jarnette papers No. 22. In one of the translations of Lord Baltimore's charter it is written thus: "By a right line drawn from the *promontory* or cape of land called Watkins point (situate in the aforesaid bay near the river of Wighco) on the West."

By putting the words in brackets as here, all confusion is cleared up; the meaning of the charter unmistakably is: "Watkins point on the West of the peninsula situate," &c. The line then was clearly to run from West to East. It had to run from West to East from that point "over Pocomoke river." It was marked by apparent marks and boundaries, "numbering upwards of thirty still remaining, any two of which identify and verify it for its whole course. If its initial point, the part of Watkins point which was its Westernmost angle, was entirely washed away, the still apparent marks and boundaries demonstrate its course with mathematical certainty and precision. If it was a due East course, then one single mark enables us to give it precise location for its whole length. No matter what course it was run; "if it was a right line," then any two marks on it will determine its course. If the initial point don't now exist to show where the line began, the line exists to show where the initial point was in 1668. But Watkins point does exist, and the part of it then named from which the line was run. The Westernmost angle then is still not only pointed to by the marks and boundaries of the line which was run, but *it is still the Westernmost angle of Watkins point.* Watkins point is
245 not only the initial point of the line on the Eastern shore, but it is the initial point of the whole boundary line of Maryland, and it is both the initial and closing point of all the lines between Maryland and Virginia. No matter which way the line runs after running up the Delaware to the 40th parallel, after passing West on that parallel, after running South on the meridian of the first fountain of the Potomac river, after striking either bank of that river, right or left, and running down to either Cinquack or Smiths point or to Point Lookout," it had to close at Watkins point. Now, it is reasonable, not to say reputable, to suppose that two provinces and two states, like Maryland and Virginia, in all the time of their colonial and sovereign existence never found and agreed upon the initial and closing point of their divisional lines? So that it can be certainly identified and verified now. It is *two*

preposterous to be presumed, and if pretended merely it can be disproved.

Calvert and Scarbrough strictly obeyed their instructions—they ran a "right line" *straight*—geometrically "the shortest line that can be drawn between two points. A right line may be horizontal, perpendicular, or inclined to the plane of the horizon." It is said the line was not run due *East.* It *was not required by the charter to be so run.* It was to be drawn from the promontory or head land called *Watkins point,* near the river Wighco *on the West,* into "the main ocean on the East." They met on the place called Watkins point. They identified the location of "Watkins point" after "taking a full and perfect view of it to be: The point of land made by the "North side of the Pocomoke bay and South side of Annamessex bay." *That* they *concluded on the place itself* where Smith's Map lays it down:—not a mathematical point without length,
breadth or dimensions, but a tongue or point of land, a geo-
246 graphical tract of country forming a promontory between
Annamessex and Pocomoke bays. The Big Annamessex is the river meant, not the little Annamessex, now, but not then mapped; the latter had no bay. The promontory is laid down by Smith in form very like as it is laid down now on the chart of the coast survey. It is in extent from North to South about ten miles in length, its general line of coast being nearly due North and South. Its whole surface pointing to Tangier bay or sound in a generally Southwest course; and it is an average width of from five to seven miles—the terminus or Southern point of the promontory is now, as it was laid down in Smith's Map of 1628-'9 at what is now called Cedar straits. The Little Annamessex river, as it is now called, a creek, not widening into any bay before it mouths into Tangier sound, laid at the time of Smith's Map as it now lies, midway precisely between Big Annamessex bay's Southern headland and Cedar straits, the terminus of the promontory of Watkins point. And the North headland of Little Annamessex was, by Smith's Map, as it is now, the "*Westernmost angle*" of the coast of the promontory of Watkins point. It is *the* promontory of Watkins point, and the only promontory of that point projecting into the Tangier bay. The point of the main land is not a "promontory" at all; it cannot be so called either in the language of navigation, geography or geometry. It projects into a shallow, narrow thoroughfare, not considerable enough hardly to be called a "strait," is veiled entirely by groupes of islands East, West and South of it, and not navigable except by small canoes at high tide.

The part of Watkins point which is its Westernmost angle, taken by Calvert and Scarbrough, is a "head land," is a "point," is a "promontory" projecting from the shore "into the bay or other
expanse of water," a small "cape' or tract of land "extend-
247 ing into the sea," or a lake or river *beyond the line of the shore,* and it can be sailed around and "doubled" by navigation. A promontory differs from a cape in denoting *highland.* Lowland projecting beyond the line of the coast into the sea may be a *cape* or *headland,* but it must be highland comparatively to be a

promontory. In that sense even the North headland of Little Annamessex, the Westermost angle of Watkins point, as compared with the point at Cedar straits, is the "promontory" of the ten miles coast of "Watkins point. All the land along that coast is marshy and flat, but this angle is high enough to be sandy, with some elevation higher than that at Cedar straits. But whether the most prominent part of Watkins point be the initial point of the survey or not, *it was made the part for the initial point.*

There the point started, not only for the reason that it was the Westernmost angle of the coast, but because it was midway the length of coast—it was fairest and most equal and just. They could not start a line from each and every part of a geographical point ten miles long—they had to agree upon a *part* of the point as the initial part for the line that had no breadth. If they began North, at Annamessex, they would wrong Maryland; if South, at Pocomoke, they would wrong Virginia. They therefore took for their initial point the North headland of Little Annamessex, on what is now called James island, midway exactly between Big Annamessex and Pocomoke bays.

And here it must be noted that they *then*, Calvert as well as Scarbrough, *did not call the Pocomoke the Wighco.* Calvert is presumed to have known it was a misnomer by Smith, and that the true Wighco was North. They called the river, the North shore of which was the Southern bounds of Watkins point, Pocomoke; and they knew that the Wighco was North of Annamessex bay,
248 whose Southern shore was the North bounds of Watkins point. They were ordered and bound to run *"a right line."* They *did*, by running, as they reported, an "East line," and were wonderfully accurate, for the times and instruments, in not varying from an East line but 15′ over what Virginia by law allowed in her surveys—5°. Calvert and Scarbrough varied but 5° 15′ from due East. See Michler's Report and Henning Stats. at Large.

And they stated expressly that they had run the line "from" Watkins point, and they specified the *part* of the point from which they had run it, viz: "the extremest part of the Westernmost angle of the same." And they further report that they run this line—not up, nor on the shores of the Pocomoke *river* or *sound*, but "over Pocomoke river." This word is not "along" to run lengthwise, nor *"across,"* to run from side to side merely, but it is stronger and expresses more than either. The line did not run *"along"* the *the* right bank of the river and at a certain point run "across" the river, but it was run *"over"* the river, signifying that in this instance it was moving *from* the West and *over* the river to a place beyond the left or East bank of the river near Robert Holston's. To pass *over* a river is to pass over both banks as well as the water. Its root signifies motion, *arriving at* and *departing from*, and *to pass across and beyond*, whether above or on the surface, it always imports *excess.*

But there is a better test of the meaning of the commisisoners than mere words. If they had started at Cedar Straits—if that was their initial point—nowhere would a *"right line" run East from it have touched the Pocomoke river.* It would have intersected the open

Pocomoke *bay* or *sound* from three to five miles *below the mouth of the river,* and would not have run over *the river* at all. Again: it was run expressly to a place near Robert Holston's on the East
249 bank of the river. Now, even granting the Pocomoke bay was meant for river, then another test, more trying still, obstructs the claim of Maryland. How came the place on the East side of the river near Robert Holston's to be so far North of a right line run East from Cedar straits? That place, now easily identified, lies nearly Northeast from Cedar straits. This proves mathematically that if these commissioners ran the part of a right line East to near Robert Holston's house, they could never have started at or anywhere near to Cedar straits. On the contrary, they expressly say that they run an East line from Watkins point "agreeable with the extremest part of the Westernmost angle" thereof. They could not run it from the whole, each and every part of Watkins point, for that would have run the broadest line ever known to the god Terminus between provinces. They agreed upon the midway Westernmost angle of the point, and from *"the point" agreeable with that part of it, i. e.,* from that extremest *part* of the Westernmost angle of Watkins point, they ran an *East* line *"over* the Pocomoke river" to the ocean sea, etc., etc. They expressed this distinctly, not only the *"part of Watkins point"* from which they run, but *the part of Pocomoke river* "to" which they ran, viz: *to* the land near Robert Holston's. And *"there they had marked certain trees."* They don't report that they there commenced to mark trees for the first time on the line, but that there especially they were particular "to mark certain trees," because it was there that the line "was run over Pocomoke river." They were particular there not only to "mark *certain trees,"* but to name the land where it was—near Robert Holston's. No preceding word or phrase negatives or asserts the fact that they did or did not mark other trees before arriving at the Pocomoke river; but the subsequent language, "which are so continued,"
250 implies that the whole line was *continuously* marked, by trees or otherwise. We have already shown a reason why, if marked, the marks were not preserved or were purposely destroyed; the want of "processioning" or renewal of marks at regular intervals of years, for want of "neighbors" loyal to Virginia, and owing to the aversion of the refugees from Virginia settled there to be subject to Virginia's laws of persecution and intolerance. But however that may be, (this part of the line on the main land West of the Pocomoke river has not been searched for marks by the present commissioners) let it be admitted, for argument, that they *marked no trees* on that part of it; yet does that prove that there were no *other* marks of something else besides trees there? Was not the extremest part of the Westernmost angle of Watkins point itself a *mark,* a headland to begin with, more permanent and perdurable than marks on trees? Suppose there was not a mark between that and the *"certain trees"* marked near Robert Holston's, would that invalidate the line, or render its course uncertain even? Calvert and Scarbrough say the "certain *trees* which are so continued," &c., not meaning the *trees* they there marked were continued, but their marking of the trees

was so continued to the sea side. Will not the line continued to be marked to the sea side show the course of the line West as well as East of the Pocomoke river? It does show its course West, and that is *direct* to the "extremest part of the Westernmost angle of Watkins point." But there was no necessity, and it was then, and is now, very inconvenient to mark from that angle to where the line crosses the Pocomoke river. The distance is only fifteen miles, and the line, nearly its whole course, passes over an immense body of mink and muskrat marshes. The whole area South of the line West of Pocomoke river down to the Pocomoke bay and river and West to the Tangier sound and Cedar straits, is but about thirty-two
251 square miles eight only of which is forest or arable land, and the remaining portion, twenty-four square miles, is marsh. Its extreme breadth is between the initial point of the survey and Cedar straits, and the shore of Pocomoke sound running Northeasterly from Cedar straits. The strip between the line and the sound narrows as you approach the mouth of the river to an average width of not more than a mile and a half. The estuaries at the mouths of East creek and Marumsco creek make up North to the line, and that of Ape's Hole creek runs up in half a mile of it. It is very doubtful whether there were at that day many if any obstructions to the line of sights for a survey the whole distance. There are but few now as compared with any other line of the same extent. From the Westernmost angle to James Tuft's house on Somers cove near Crisfield, is a distance of clear sight for three miles. Then commences some pine forests of secondary growth that, according to the topographical marks of De la Camp's survey of the line, continues for about two miles, and thence to Marumsco creek for six or seven miles the line is over marsh, and then begin the swamps of Pocomoke for about four miles. There are not five miles of distance on part of the line which can't now be run by the longest sights with the naked eye. Having the headland of Little Annamessex for a natural object to start by and to sight an East course by, there was no difficulty then, and there is none now, in running the line without a mark. The Westernmost angle of Watkins point and the crossing of the line over Pocomoke river could always easily by long sights determine where marks and monuments could be placed when required.

Whether this part was marked or not, except at the two termini, *there they at least were fixed;* and if marks were not placed there, there were marks placed on Smith island corresponding to this line deflected South of West at the angle of Watkins point towards
252 Smiths point, under Lord Baltimore's grant, and afterwards deflected North of West, under Lord Hopton's grant to Point Lookout. The first line cut the South end, and the last the North end of Smiths island nearly through, or at its great thoroughfare. See Michler's and De la Camp's surveys, and the depositions on the subject of the stones and stumps and other marks at Barnes point, near Troy island, in the thoroughfare, on Cow ridge, and on the Pitcraft patent, and at Drum point. The line was never actually run across the bay. Lord Hopton had no grant on the Eastern shore, but when the grant to him was confirmed to Virginia jurisdiction, that state of

course claimed that the line closed at Watkins point from Point Lookout instead of from Smiths point. This accounts for two lines, one at each end of Smiths island, and the marks there, and for the confusion of traditions about them. But Maryland can not deny or dispute that Lord Baltimore's and Virginia's patents were both required to make Henry Smith's title to Pitcraft on that island complete for the whole and respective portions of that tract patented. This is sufficient to show that there was a divisional line on Smiths island, and if so, how could any line be drawn from Smiths point to Cedar straits and cut Smiths island? Drawn to the Westernmost angle at James island, it cuts South of Horse hammock, and leaves all of Shanks and a large portion of Hog neck in Virginia; drawn to Cedar straits, it leaves all of Smiths island North in Maryland. An inspection of this diagram on the map of coast survey will reduce the problem to one of Euclid. Virginia has always claimed and possessed the Southern end of Smiths island; that is not denied. It is North and West of Cedar straits, and Smiths point is South of both Smiths island and Cedar straits; how then could a *right line* across the bay be drawn from Smiths point to Cedar straits and cut any portion of Smiths island? The problem would puzzle all
253 geodesy. Smiths island was part of the Eastern shore, and was divided in no other way than by the imaginary closing line from Smiths point or Point Lookout to the Westernmost angle of Watkins point. It was so divided by both of those imaginary lines, and at the South end the royal or state's jurisdiction was never denied, but mutually admitted by patents for the respective parts of the same tract of land which were in the respective colonies to the same patentee at the same time. Virginia granted her part, and Maryland her part, of Pitcraft to Henry Smith, assignees of Stevens. (See copies of deeds.) There being a divisional line there then, it must be plain that the initial and closing point of Lord Baltimore's grant was North, and considerably North of Cedar straits. They reported further that they had continued the East line over Swanseacute (meaning Swanseagut) creek into the marsh of the sea-side And here it might as well be claimed that they ran *up* or *down* or *along* Swanseagut; by a crooked line when they reported an East, a straight, a right line run *over* Swanseagut creek, as they had reported it *run "over* Pocomoke river." All this was done "with apparent marks and boundaries." Not one in most lines between states or provinces was ever more clearly and plainly marked. The marks and boundaries are still apparent. Lieutenant Michler's report to the commissioners, Dec. 20th, 1859, says:

"Some of the marks consist of old blazed trees, such as oak, hickory, gum, cherry, persimmon, mulberry and sycamore. Other marks of the line are to be found either in country roads, or lanes or in divisional fences of neighboring farms, or in gates, or sometimes in houses, known and admitted to be such by all persons, irrespective of state, the localities being handed down from one generation to another. Along the whole length of the line, from Chincoteague to the Pocomoke river, a distance of between
254 twelve and thirteen miles, there were existing of such marks, at the time of the survey, 33 trees, one gate, the sight of the

ruins of an old house standing at the time the Scarbrough line was run, two state roads located on the line, making in all an average of one mark for every half mile." These marks when laid down on the maps were found to be nearly in the same straight line, *the general direction* furnished the course. Two only of those marks are at any distance from a straight line, and these not more than 350 feet. The azmuthe or direction of the line 5° 15′ N. of E., and the line between Chincoteague bay and Pocomoke river, when prolonged across the latter river, and along and near the N. shore of Pocomoke bay to Tangier sound," &c., "reaches the sound *at the Westernmost point of Janes island, about 500 feet South of the coast survey signal planted on this island. No* boundary marks of any kind were found West of the Pocomoke river." *And they mutually agreed that this line thus beginning and running and marked continuously from the bay to the sea side, "was to be received as the bounds of Virginia and Maryland on the Eastern shore of the Chesapeake bay.* Thus, wherever beginning, and however running or run over land and rivers and creeks and bays, marked or not marked from natural objects to natural objects, over Pocomoke and over Swanseagut creek to the sea, a straight line," 'twas to be received as the bounds of Virginia on the E. shore." *and it was so received by both provinces.* This agreement was signed and sealed and approved, and cannot be revoked or modified without the consent of both parties; whatever may be the issues respecting the Potomac boundary, there can be but one issue respecting the boundary on the Eastern shore—*an issue of fact;—was this line run as described and mutually agreed upon?* The whole case may
255 be rested upon that issue. But Virginia is desirous of presenting the original fairness of the adjustment. We have already shown that in reference to the shape and size of Watkins point as a tongue of land *from* which to run a line, it made an almost exact division of it, to begin at the extremest part of the Westermost angle of it, and to run an East line to the ocean with a variation of about *50°* 15′ N. That point is exactly under the 38th parallel of *N.* latitude. That parallel was the line of Maryland on the Eastern shore. These commissioners were not to run any line but from that point to the main ocean. They had nothing to do with the Potomac line or the closing line across the Chesapeake. But they had to look to two criteria to determine the line accurately; first, to Watkins point; second, to the 38th parallel of N. latitude. They did both with remarkable precision and justice to both provinces. They took the North headland of Little Annamessex which divided Watkins point. But the part they took for the initial point of their survey was about two miles South of the 38th parallel; the variation of the needle in 1668 is estimated at 4° 54′ West; Virginia allowed by law in her surveys about 5° variation. Disregarding the variation at that date, it may be said that the surveyors' compass itself observed both the criteria of an almost exact division both of Watkins point and of the 38th line of latitude on the plane of the Eastern shore. Calvert and Scarbrough tell us they began at the extremest part of the Westernmost angle of

Watkins point, and ran the line over the Pocomoke river and over Swanseagut creek to the marsh on the sea side. Now one has but to look at the maps prepared by Michler and John De la Camp, under the direction of the then commissioners McDonald and Lee, in the year 1860, to see that the line of Calvert and Scarbrough, after passing East over the Pocomoke river, cuts the parallel of 38° N. L. almost exactly in the middle of the boundary line, runs
256 across Swanseagut a mile or more North of 38th parallel, and terminates on the sea shore about one and a half miles North of the same. Thus the 38th degree being exactly true line, by observing the Westernmost angle of Watkins point and Swanseagut creek, they divided the plane of the peninsula as equally by the diagonal line as by the parallel itself. What Maryland gained in the angle South of 38° on the Western side, Virginia was compensated for by the angle gained by her on the Eastern side of the peninsula; the Calvert and Scarbrough line cuts the 38th degree near Wagram about four miles or more East of the Pocomoke river; Maryland gained rather the largest angle. But whether it was equal or not, *it was received and adopted by both provinces as the line on the Eastern shore*, and has been the legal if not respected line for upwards of two centuries. The lands of the late John M. Dennis, one of the most intelligent and respectable gentlemen of Maryland, who lived and died near where the Calvert and Scarbrough line crosses the Pocomoke river, always paid land taxes partly in Maryland and partly in Virginia; and the present Judge Franklin, now living on the Eastern shore of Maryland, now pays land tax partly in Maryland and partly in Virginia, on a large tract at Troy, or Long point, on the shore of Chincoteague bay, East of Swanseagut, at the Northeast corner of Accomack on the main. The line was straight from the Franklin to the Dennis farm—from Long, or Troy point, to the crossing of the line over Pocomoke river. When? how? by what agreement or survey? By whom was it ever made a crooked line between that river and the Westernmost angle of Watkins point, to which from that river it points straight as an arrow now? Certainly Virginia has never consented to a modification or change of the line on the Eastern shore since 1668. How then is it that Maryland pretends that it ran by the river?

This crook in the line the commissioners of Maryland have
257 endeavored to make out of the words "agreeably, &c.," in the report of C. and S. The distortion is expressed in the report of Thomas J. Lee, September, 19th, 1760, to Gov'r Hicks, of Maryland, page 17. He says: "That these commissioners (Calvert and Scarbrough) were qualified" to fix the bounds of Maryland and Virginia upon a necessity for so doing, and fixed and established the *whole boundary* across the peninsula or chersonese "by a marked line between the Pocomoke and the marsh on the sea-side." run East by compass *"agreeably with," not from*, but in the direction of the "extremest part of the Westernmost angle of Watkins point." It is enough to say for the argument, but not enough to say for the reproach of this plain perversion of language and of fact, that it

contradicts the charter of Lord Baltimore, the instructions of both provinces to Calvert and Scarbrough, and their express report to the contrary. The charter makes Watkins point the initial and closing point of the whole boundaries of Maryland. Now, if this idea of Mr. Lee means anything but to crook a straight line it means to argue or claim that the line was run *from the Pocomoke river* to the shore of the *ocean*, "agreeably with the extremest part of the Westernmost angle of Watkins point, pointing to it, and on a line with it; but that then Calvert and Scarbrough returned to the Pocomoke river where the line ran "over it," and instead of allowing the line to run over the river, ran to the middle of the river and not *over* it, but down it to Cedar straits, and thence to Smiths point. If that is true, then, the line never ran from or to the extremest part of the Westernmost angle of Watkins point at all. It makes one impatient in asking whether the charter did not require *a right line* to be run *thence* to the ocean. Whether Watkins point was not identified by Calvert and Scarbrough as laid down on Smith's Map? Whether a line could be run from the whole point? Whether the ex-
258 tremest part of the Westermost angle of that point was not agreed upon as the part "agreeable with which the line was to be run"? Whether the commissioners of '68 don't expressly report that they run the line *from* that *part* East over the Pocomoke river and Swanseagut creek to the marsh of the sea? And whether the line of the Pocomoke river would be agreeable with such a point or part of a point on an East line across the peninsula running the course of the line East of the Pocomoke? Was ever an initial point so treated by a survey as never to touch it after starting from it? This is really the only pretension of the present commissioners for contradicting the express report of Calvert and Scarbrough. We are willing to rest the whole issue upon the test whether they started at the said part of said angle of Watkins point and ran the line straight, or right or East to the ocean. There is nothing to warrant this pretension of Maryland. It is pure invention, not only without authority or ground, but pointedly in contradiction of the facts reported by Calvert and Scarbrough. The only meaning of the phrase "agreeably, &c.," is that the line was run "conformably" with the extremest part of the Westernmost angle of Watkins point, and not with any other part of that point. With that part of that point was the line agreeable and with none other. At page 12 of his same report, Mr. Lee inculcated the same idea by saying "the boundary they (Calvert and Scarbrough) established by marking certain trees began over Pocomoke river on the land near Robert Holston's, and was continued by marked trees on what they deemed an East line to the sea-side." The boundary they established "began" not over Pocomoke river, but it was run *from* the extremest part of the Westernmost angle of Watkins point "over Pocomoke river, as well as over Swanseagut creek, to the sea." An-
259 other error of Mr. Lee is same page 17—"that they neither marked nor established a line of boundary across "*any part* of what is now Somerset county, Maryland." This is an error equally gross. Somerset county, Maryland, was established in 1666,

the 22d August, two years *before* this line was run by Calvert and Scarbrough in 1668. On the South it was bounded by a line from Watkins point East to the ocean, East by the ocean, and North by Nanticoke river and sound, and West by the Chesapeake. Now this shows how Somerset county came to incroach on the point at Cedar straits. Maryland then claimed that her limits extended South to Cedar straits. If that was the initial point of the line between the two provinces, then a county of Maryland could be laid off that far South; and suppose it was; why, then Mr. Lee was right. But its Southern boundary line was no more definite than the whole body of the land of Watkins point. But the line of the two provinces was afterwards, in 1668, fixed and established, beginning at the extremest part of the Westernmost angle of Watkins point at the headland of Little Annamessex, midway between Big Annamessex and Pocomoke bays, and was run East over Pocomoke river. Was this not marking by an initial point on Watkins point, and by a marked place of crossing Pocomoke river a line of boundary across a part of what is now Somerset county, Maryland, if Somerset had before then been laid off as low as Cedar straits? Mr. Lee says: "That they marked and established the present divisional line between Worcester county Maryland, and Accomack county, Virginia." The truth is that Calvert and Scarbrough never did mark any line between Worcester and Accomack counties, but they ran the line, which is now the divisional line between these two counties, not as between them as counties, but as between the two provinces of Maryland and Virginia. Was Worcester laid off *before* or *after* Somerset? If before, how came the Somerset Southern line to run up the river Pocomoke instead of East by a right line to the ocean, to the point of the Southwestern corner of Worcester to the point near the land of Robert Holston. If afterwards, why still did it not run East to the ocean by right line? Lee says the line was intended to be an East line; the charter says that it should be a "right line" to the ocean.

Calvert and Scarbrough tell us where they began and how they ran the line; and yet this commissioner, without data, without any evidence whatever of any other line than that of Calvert and Scarbrough ever having been run by any body at any time, bluntly says: "They (Calvert and Scarbrough) established the boundary between the two colonies East of the Chesapeake *precisely* as it now exists, and they (Calvert and Scarbrough) or Maryland and Virginia designed that the Southern limits of Maryland should extend to Pocomoke bay."

It is only a proof that a respectable topographer was not as familiar with charters and deeds, and evidences of title and the laws which govern their construction, and the bounds of provinces, as he was with the quadrant and theodolite. He speaks of a boundary as it now exists. What boundary? None other existed but that established and fixed by Calvert and Scarbrough in 1668. For a line bound to *begin* at some part of Watkins point, bound to be a right line to the ocean from that point which was begun at a specified point, which was run East to the marshes of the sea by a continuous course from

the initial point *over* Pocomoke river and over *Swanseagut* creek, which Maryland and he both admit binds Worcester, one of her counties, he arbitrarily asserts and reports another line, beginning at another place, running, not a right line or East line, following the meanderings of the Pocomoke river, not over it, to where he says the Calvert and Scarbrough line began, in the face of what
261 they reported, and in the face of the charter of Lord Baltimore itself, and this he avers to be the line "precisely as it now exists." Did it never occur to him to inquire why, if the Calvert and Scarbrough line binds Worcester county in Maryland, it does not bind Somerset county in Maryland too? That line never did cut Somerset county, Maryland, in one sense, for it only divided it from Virginia—the part South of it was Virginia, and not Somerset county, Maryland.

But if Calvert and Scarbrough did not begin and run an East line, or right line as they describe, where did they begin and run it? They ran one, and but one line. Maryland has never named or shown any other, except as claimed by this report of Mr. Commissioner Lee. Even he admits it was intended to be an East line; but even he could never suppose that any one could have *intended* the line he claims from Cedar straits up the Pocomoke river to near Rob't Holston's to be an East or a right line, because the moment he got to near Rob't Holston's he found whoever ran the line East of the Pocomoke could run an East or right line if they *intended to do so*, and they certainly, on his theory, had not done so; and, as the charter required, before they reached near Robert Holston's, would his line be "agreeable with the extremest part of the Westernmost angle of Watkins point?"

But besides the argument of "agreeable with," Maryland advances another argument called "*washing away*." Watkins point was laid down and named by Smith. There it is now, in the same shape of headland and coast, remarkably the same; and the headland of Little Annamessex is still there the most Westernmost angle, and there still is the point of main marsh land at Cedar straits, and there are the Fox islands, so strikingly described by the county court of Accomac in 1663, as a "*spiral point*"—so called because of broken thoroughfares of the Fox islands at its end. Those islands were there then as now, as Smith's Map shows. To get over this,
262 Maryland has resorted to "traditions." Can traditions rebut the recorded articles between Calvert and Scarbrough? Can all the washings of the Chesapeake bay, if the North headland of the Little Annamessex was not now still the Westernmost angle of Watkins point—could that rebut the mathematical certainty which can show where it was? Did not Michler's survey find it *ad punctum?* But the traditions prove where it was. See prior reports and the depositions taken by this commission.

One of the present commissioners on the part of Virginia, (Mr. Wise), in 1833 began to represent the Accomack congressional district of Virginia in the house of representatives of the United States. Certainly a considerable part of the Southern end of Smith's island was considered by all the people living on it as in Virginia; and the

people on that end voted in Virginia. John Marshall, living then and now on Shanks part of Smiths island, always voted for Mr. Wise—and there were others. Later Mr. Jones, one of the commissioners on the part of Maryland, represented the Somerset district of Maryland in the house of representatives of the congress of the United States, and he was for several years cotemporary there with Mr. Wise. Every two years, whilst they were there together, their elections came on—did John Marshall, and others on the South end of Smiths island ever vote for Mr. Jones? If not, it was because they, and their fathers before them were deemed, and had ever been deemed, in Virginia territory. Can Mr. Jones show how that came to pass, if the line on the Eastern shore began at Cedar straits, and was, at the same time, a *right line* across the bay to Cedar straits *from Smith point?*

263 A right line from Point lookout to Cedar straits *would cut Smiths Island:* but no such line was ever run and could not be, under Lord Baltimore's charter, and was not required to be under Lord Hopton's grant, he being granted nothing on the Eastern shore. Now these are exceedingly strange facts, when contrasted with such traditions as those of "King Nelson," and those of living witnesses who pretend to have heard "once upon a time," from old people long dead, that the main land at Cedar straits once made mainland with Fox island, and Fox island with Watts island South —which must have been long before John Smith's survey in 1608, and long before his map in 1629—which lays down the strait now called Cedar and the Fox and Watts islands just as they are now. The fact is that such speculations on physical geography, founded on such washy traditions, and the mistaken proclamation of Governor Harvey, and the clamors of Quakers of Annamessex in 1663, and the fact that Smith erred in laying down the 38th parallel so far South, were once the only pretexts for claiming as far South as Onancock. See Smith's Map, Scarbrough's Report, the Proclamation of Governor Harvey, and the depositions taken before this commission. But all that pretension was ended by the settlement fully and finally made by Calvert and Scarbrough in 1668. Lee even admits "that agreement between these commissioners was accepted as final by the crown, and the lord proprietor of the province," and "that they declared this line (by Calvert and Scarbrough) *to be the bounds of Maryland and Virginia upon the Eastern shore of Virginia."* What more then is required but to re-mark it permanently? If arguments of inference are still to delay the execution of this agreement capable of being reduced to mathematical demonstration, there are abundant sources of inference sound and clear in favor of what Virginia claims. For example, there were

264 two classes of bays and rivers, the jurisdiction of which the two provinces and states have had to regulate by compact or concurring laws—a river, the Potomac, was concurrent or co-terminus with the line of the provinces, whether it was on right or left bank, or in the channel. The Chesapeake bay was not co-terminus, or concurrent with that line, like the Potomac, but the line of the provinces cut it transversely. Now compacts were made and con-

current laws were passed by both Virginia and Maryland in respect to the building of lighthouses, establishing buoys, forts, ferries, wharves, &c., &c., and pilotage. It would be very tedious to encumber this report with an analysis of all or any of the old laws to show the *contrast* of those joint regulations, pertaining to the coterminus waters, with those pertaining to the waters which were *cut across*, or transversely, by the divisional line of the two provinces. Was the Pocomoke provided for like as the Chesapeake bay, or like as the Potomac? In every case like as the Chesapeake bay. Act 9 of 1663 shows that the king of Potomac's lands were all sold and proceeds appropriated by Virginia. Act 1, 1667, relates to a tax of two shillings per hogshead on tobacco, &c., for relief of inhabitants "*in Potomac river.*" Act 1, 1679, relates to stores and garrison against Indians at the head of Potomac at a place called Niapsco. See Purvis' Collection, &c., London edition of 1682. All the laws touching the Potomac on every subject apply all along the shores or channel from head to mouth. But the laws providing for the proportionate joint expense of light houses, buoys, &c., where one province held the head, and the other the mouth of the waters, were very different. Maryland, from her charter, held the head of the Chesapeake bay and the head of the Pocomoke river; and Virginia after, as well as before the grant to Lord Baltimore, held the mouth of each.

It was for that reason that the regulations touching the
265 Potomoke river were assimilated to those touching the Chesapeake bay, and not to those of the Potomac. But this line of argument is a waste of labor, when we have the positive and indisputable line agreed to by Calvert and Scarbrough and fixed forever by the two provinces in 1668. But not only did Calvert and Scarbrough and the two colonies fix and establish this line, but they settled and adjusted the rule by which every question of claim or right dependant upon the line should be determined. Lord Baltimore, as we have seen, hurried and encouraged the issue of patents by Elzey and others from 1662-63 up to 1668. And Virginia had granted patents up to Bokotonock on the Sinepuxent bay on the sea coast. Maryland had been occupying Southward on the bay, and Virginia Northward on the sea side. When the line was fixed the rule was settled to govern these conflicting patents too. See the Imprimis of the Articles of Agreement. All the patentees of Virginia were saved in their titles. Again: All patentees of Virginia elsewhere on the Maryland side of the line, of lands *not also patented in Maryland*, were saved as in the first class. Again: All patentees of Virginia, *who had also seated them* in Maryland, *though already patented in Maryland*, but not seated, should enjoy the same, unless they were proved to have seated them in defiance and in despite of the governor of Maryland after warning given, &c. Again: Any patentees of Virignia in Maryland for lands for which Maryland had granted patents, should yield to the patentee from Maryland; in all and every case "*paying the half fees to the surveyor general (Scarbrough), and full fees to the secretary and chancellor (Calvert).*" Here is an example that commissioners in old times were

like those of present times, careful of their own perquisites. Scarbrough got half and Mr. Secretary and chancellor got full fees. And why the differenec, is not now known. Certain it is, that the patentees of Virginia in the Maryland territory, as found by
266 the line established, had a much better provision made for them than the patentees of Maryland found to be in the Virginia territory. There was no reciprocity at all. Every patent granted by Maryland South of the line fixed, was left to its invalidity. Those granted *before* 1668 *were annulled,* and those after that date were void.

Such is the fate of every patent adduced now on the part of Maryland. Why was this? Some people in Annamessex always alleged that Scarbrough conjured Calvert by allowing full instead of half fees. The reason was a graver one, and rested on better grounds. Not an intruder from Maryland South of that line fixed by Calvert and Scarbrough in 1668, either before or after that period, ever seated or settled *East of Pocomoke river.* There were no settlers on that part of the Eastern shore line who had ever defied or resisted the royal government of Virginia. For the reasons already stated, the refugees and non-conformists had all been driven West and North of the Pocomoke river. There, from Pocomoke to Manokin, they had settled *in defiance* of the royal government, and to defeat its jurisdiction—just as Maryland in the 3d article excepted against such as were seated in her limits under Virginia's patents, so Virginia excepted to all such settlers in Annamessex in her limits, as all had been seated by patents from Maryland in defiance of the royal government. All these had been so patented and seated; there were none anywhere else to be provided for, and those there were therefore excluded from this saving of titles. Nobody wanted their lands South of the line then, though some are valuable now; and the titles, by mere omission and dereliction, have never been disturbed. Now they will be in a tantalus condition; if they are given to Maryland they will be seated on the Tangier and Pocomoke
267 sounds, with the oyster rocks, which are their meat and bread, at their doors, and will be excluded from taking any in Virginia's waters. If Virginia takes them within her limits, they can live and thrive and their lands increase in value.

X.

After Lord Baltimore settled his boundary with the colony on the Eastern shore of the Chesapeake bay, he had a controversy with Wm. Penn about the boundary of his Northern limits. He claimed the colony of Delaware and the line of 40th North latitude. The grant to Penn is described in the King's letter to Lord Baltimore April 2d, 1681. See De Jarnette papers, No. 113.

The contest between Penn and Lord Baltimore was one between a court Quaker and a cavalier Catholic. The latter was much the most honest gentleman. From London, 16th September, 1681, Penn warned settlers, whom he claimed to be within his grant of three degrees North latitude, not to pay any more taxes, or "sessments," by or under any laws of Maryland. He coaxed them movingly, yet

warned them of his power with his superiors in London. This letter was partly addressed to *Augustine Herman*, Lord Baltimore's map maker. See Dejarnette papers, No. 114. On the 19th of August 1682, the king ordered Lord Baltimore at once to proceed to set forth and ascertain the boundaries between Maryland and Pennsylvania, and says "that the boundaries of Maryland and Pennsylvania cannot by any method be so certainly effected as by an admeasurement *of the two degrees North from Watkins point, the express South bounds in your patent, and already settled by commissioners between Virginia and Maryland.* "Here is the king's attestation of two facts: first, *that Lord Baltimore was granted but two degrees,* and in saying "the Express Southern bounds in your patent," the meaning is not that *two degrees* were expressed, but that *Watkins point* was expressed; and second, that being *already settled by commis-*
268 *sioners*, the latitude was then fixed, and known to be two degrees from the 40th parallel; Watkins point fixed the degree, its latitude being known. If the latitude of Watkins point was not known to Smith in 1629, it must have been known later in 1682, for then the observatory at East Greenwich had been established eight years under Flamsteed. Again, in the same paper, the king said: "We have thought fit to recommend the same in a most particular manner to you, willing and requiring you, that with all possible speed, upon the receipt hereof, you proceed to determine the Northern bounds of your province as the same borders on Pennsylvania, by *an admeasurement* of the *two degrees* granted in your patent, *according to the usual computation of sixty English miles to a degree. Beginning at the South bounds of Maryland, according as the same are already settled* by commissioners as is above mentioned &c." Thus Lord Baltimore was in effect ordered to begin his measurement on his South bounds, as already settled by Calvert and Scarbrough, the only commissioners ever then appointed, who did settle them at Watkins point, with its initial at its Westermost angle. If degrees were not named in Baltimore's patent, Watkins point was, and was found exactly on the 38th parallel. Lord Baltimore had then but to measure 120 miles North from Watkins point and he would reach his North boundary on the 40th parallel. But it matters not what its latitude was, this is proof, that it was settled both that Watkins point was ascertained and fixed, and that Lord Baltimore's Southern boundary line was settled; and we have asked in vain, again and again, when did it become unsettled? And it must be observed, that this order came just fourteen years only after the Calvert and Scarbrough survey. When all the facts were fresh in the records of England and the colonies. See De De Jarnette papers, No. 117.

But we have positive evidence, which Lord Baltimore himself
269 has left to the state records that he acknowledged and acquiesced in the Calvert and Scarbrough line.

He has left his own account of "a conference held between the Right Honorable Lord Balitmore, pro'r of Maryland, and William Penn, Esq., proprietary of Pennsylvania, at the house of Col. Thomas Tailler, on the Ridge, in Ann Arrundell county, the 13th of December, 1682." See Dejarnette papers, No. 118. With a short preface

he gives their colloquy. He describes Penn's florid manner, "It was oily, it is true; he would do all to be a good neighbor." He then produces a letter from the king (that just quoted). On reading it, Lord B. complained of some misinformation, and produced his patents and a transcript of Penn's patents, and then describes himself as saying: "I have for my *Northern* bounds the 40*th degree* of North lat., which, by *your* patent, is your *Southern* bounds, as Watkins point is mine." Did he, then, and when he noted what was said, then, not know where Watkins point was? and where the identical part of it was where his Southern bounds began? Nothing is left to doubt about the answer to that question; for fortunately he had the correctness of his statement of this conference certified and appended to it, *and the first name* of six persons who signed the certificate is that of *"Philip Calvert," his nephew, his chancellor, his commissioner,* with Scarbrough in 1668. Lord Baltimore certified the true copy himself found in the state paper office of England "Colonial Maryland," vol. 43, p. 149, 153. Here, then, when with this letter of the king's twice reminding him that his Southern boundary *was settled by commissioners at Watkins point.* And when he said "Watkins point is my Southern boundary," he could have said nothing else in the presence of "Philip Calvert" but what he did
270 say and admit. And in speaking of Watkins point thus, he cannot be understood as meaning any other point and part of the point than that which had been identified by "Philip Calvert" and Edmund Scarbrough. In reply, Penn reminded him that he had but two degrees of latitude. He did not deny it. See p. 2. And then the wily Quaker tempted him to start further South at 37° 5′ N. L. *He (Penn) would take where B. ended.* This puzzled Lord B., but he was not to be trapped, and he would consider; but Mr. Penn must run line of 40th degree first. Penn then proposed for him to begin *at the capes of the Chesapeake,* which he said was in 37° 5′ N. L. The cunning shad had no scruples to conspire against Virginia's right of territory, and to tempt Lord B. to try to take it. Lord Baltimore, though knew that the lower he ran South the narrower would be his territory North. He then drew back from being pressed Southward down the Eastern shore peninsula. Penn wanted the outlet of the Susquehanna river. Lord B. repeated that he claimed 40th parallel to be taken by a sextant of 6 or 7 feet radius. Penn then offered to lay aside the king's letter, if Lord B. would begin his South line at 37° 50′ instead of 38. Lord B. bluffed his proposal by asking Penn whether he had purchased the Duke of York's pretentions to Delaware? Penn: "Upon terms," but wanted to proceed first to the bounds between him and Lord Baltimore. Lord B. still stuck to 40° N. L., "which to find," said Penn, "I propose to begin at the capes and run two degrees." To that Lord Baltimore replied: *"My Southern bounds being Watkins point, was so determined by commissioners from his majesty and others from my father. Now had they sett out Watkins point higher up the bay, my father must have been contented therewith, and the Northern bounds being the*
271 *40th degree of Northern Latitude, beyond which I am not to run."* Here is the full admission that the Watkins point line

was fixed, by whom fixed, and that he was bound by it. Set out higher up or lower down "his father and he had to be contented therewith." Could anything be more definitely expressed than this? Penn again and again repeated his proposal of the capes, and as often Lord Baltimore recurred to the 40th degree and the 7 foot sextant. Lord Baltimore again recurred to Delaware, and asked on what do you claim? Penn begged to conclude first discourse: Lord B. persisted in his charter. Penn poked at him the capes again. Lord Baltimore demanded 40°, no sea-quadrant, but a seven-foot sextant. Penn proposed arbitrators; then arose a jar about a Captain Cannaway, and mis-reports and some suspicions of foul play about maps, &c. Lord B. held to his patent and appealed to the *sun* to show where the 40th degree N. L. was. Penn wanted to go to the capes again. Lord Baltimore told him he might for his own satisfaction. Penn then became soft; whispered a wish *"between ourselves."* Lord B. only first premised that an observation be duly taken to answer the king's commands. Penn then nudged, it seems, closer up. He must have whispered low when he said: "I question not, but if the Lord Baltimore *would vouchsafe* to discourse the business in *private* with me, we should *fairly accommodate all matters.*" We are not left to conjecture what *"to discourse"* the business in private meant. No. 119 of the Dejarnette papers explains all. In a letter of 11th June, 1683, dated at Patuxent, Lord Baltimore says: "Having lately had the long desired second conference with my neighbor Mr. William Penn, I send you the same." And he prayed to be heard in person *versus* Penn. He would embarque for Eng-
272 land in April, 1684 to make good his claim to Delaware.

The written conference was headed: "The sum and substance of what was argued and spoken by Charles Lord Baltimore and William Penn, Esq'r, at their private conference at New Castle, on Delaware river, Tuesday, the 29th May, 1683." When they met that day, Lord Baltimore desired to know of Mr. Penn what proposals he had to make about their bounds. Penn answered that he would not insist on his majesty's letter of 29th August about the two degrees of latitude. But there was an admeasurement still to be insisted on. That seemed strange to Lord Baltimore. Penn, "not without some heat," explained what he meant by another admeasurement. It was this: Take an observation at Watkins point, ascertain its latitude, thence to measure to the 40th degree; saying that out of every degree he did not doubt but to gain six or seven miles, and by that means to *gett* water at the head of Chesapeake bay, and that this was the mystery, &c., &c. He would procure it from his majesty. Lord Baltimore replied he doubted whether he could so impose on his majesty and the council; spoke of Watkins point *as his South bounds* after he had fixed it, and could not see why his North bounds, as well as South, could not be measured. He spoke also of Penn's grant *by degrees*, and said, "I had nothing given me *by any number of degrees*, but *only* Watkins point for my *South bounds*. He objected further, when Penn intimated another proposal; he offered to bribe Lord Baltimore for the inlet of the Susquehanna and some land. Lord Baltimore could not assent without admeasurement of his

Northern bounds. Penn then inquired about latitude of Palmers island in the Susquehanna river. It was sixteen miles South of 40th degree; twelve miles from New Castle. Penn then asked the price. Lord Baltimore wanted time, but Penn would give him but a day. They could not agree and parted.

This convicts Penn of trying to buy Lord Baltimore to lay
273 his claim on Virginia territory. He would not and did not, but abided by Watkins point and his Southern bounds, "already settled by commissioners." This was to his honor. By whom, when, how, for what reason, was Charles Baltimore's decision and observance of good faith broken? The ground for doubting or denying this settlement in 1668 is a mystery. Lord Baltimore strongly and bravely, but in vain, after much correspondence, praying to be heard; after an acrimonious controversy with Markham about the Delaware survey, and incurring displeasure by omitting to proclaim "William and Mary," he was deposed from the right of lord proprietor, and left merely his rights of individual property. See his letters to Sir Lyonell Jenkins, June 12th, 1683, No. 120; December 7th, 1683, No. 123; to Blaithwait, No. 124, December 11th, 1683; to Sir Lyonell Jenkins, "Memorandum concerning Pennsylvania," February 12th, 1684 No. 125; Sir E. Herbert "concerning Wm. Penn," 30th June, 1684, No. 128; Wm. Markham's answer to the Lord Baltimore, March 17th, 1684/5, Nos. 130, 131, 132; Penn's petition, August 18th, 1685, No. 135; Reports of the Lords of the Committee for Trade and Foreign Plantations "upon ye difference between the Lord Baltimore and Mr. Penn, 13th November, 1685," No. 135; prescribing oaths of allegiance and supremacy; memorandum concerning Maryland and war with France, 26th April, 1689, No. 139; declaration of the inhabitants of Maryland proclaiming "William and Mary" January 7th, 1690, and order of his majesty thereon, with letter to Maryland approving the proceedings of inhabitants thereof, and ordering them to secure the government, No. 140; Lord Baltimore's petition to the lords of the "Committee for Trade and Foreign Plantations," for a hearing, and his humble proposals; and Lord Chief Justice Holt's opinion that "the king may by his commission constitute a governor (of Maryland) whose authority will be legal", petition dated September 1st, 1690, No. 141; and Lyonel Copley, Esq'r, commissioned
274 governor; commission to Lyonel Copley, Esq'r, March 12th, 1691, No. 142. All the numbers here referred to are of the DeJarnette Papers.

The reason assigned by George Treby, attorney general for seizing Maryland was, "The nature of the seizure is only to take the government out of the hands that neglected and endangered it into the king's hands; but the laws and customs and the *propertyes* of the inhabitants are to be preserved."

This brings us to

XI.

The deposition of Lord Baltimore. He was not restored to his lord lieutenancy until 1715 by George I. From 1633 to 1715 the lord proprietorship existed, with the exception of some two years,

by *ouster* of the Claiborne rebellion, of eleven years or more under the commonwealth and Cromwell, and of twenty-five years from 1790. Out of eighty-two years in all, the lord proprietor was *out* thirty-nine years and *in* but forty-three years. His territory was curtailed in that time by the decision that Delaware passed to Penn from the Duke of York, and by Penn's settlement about sixteen miles South of 40th degree N. L. Lord Baltimore never had an unclouded and quiet title until 1715. What then was restored to him? Certainly Delaware and the part of Pennsylvania taken from him were never restored, and there is no more evidence that any portion of the grant to Lord Hopton, &c., &c., was. Pennsylvania, Delaware and Virginia all continued alike to hold to their respective parts of the dismemberment of Lord Baltimore's original territory. He certainly yielded the Northern Neck of Virginia, and to the boundary of the Fairfax stone. Why, if he is now entitled to the Potomac river? That was as much in the grant as was the whole neck; and the same claim which drove him to retire to the first fountain of the North branch of the Potomac equally con-
275 strained him to yield the whole river and its islands. See Laws of Virginia, August 10th, 1736, George II., ch. 13th, an act for confirming and better securing the titles to lands in the Northern Neck, held under the Right Honorable Thomas Lord Fairfax, baron of Cameron, &c., &c. Hen. Statutes at Large, vol. 5, p. 514.

XII.

But what quieted all titles and bounds, more than any preceding events or causes between all the provinces, was the definite treaty of peace settled between Great Britain and France at Paris, 10th, February, A. D. 1763. The main ends and objects of that very important treaty, were to make peace and to perpetuate it; especially by the fixation and description of boundaries of the various provinces of the respective sovereignties in America. Each power described what they claimed and what they renounced jurisdiction over, and maps were made of their agreed divisions. Fortunately Mr. Dejarnette procured in England a photograph copy of a section of the English maps made under that treaty, "by Eman Bowen, geographer to his majesty, and John Gibson, engraver." This map contains a number of the article of the treaty printed on its face. Its title is: "An accurate map of North America, describing and distinguishing the British and Spanish dominions on this great continent; according to the definitive treaty, concluded at Paris 10th February, 1763. Also, all the West India islands belonging to and possessed by the several European Princes and States. The whole laid down according to the latest and most authentic improvements." And on its face it is inscribed: "The limits of His Majesty's several provinces are here laid down *as they at present exercise their jurisdictions.* But the limits of the Massachusetts province
276 with New York, New York with New Jersey, Connecticut with New York, and of Pennsylvania with Maryland, are not yet finally determined. Nor is the boundary of North and South Carolina yet settled; or of South Carolina with Georgia." But the

boundary of Maryland and Virginia was settled and determined and laid down by authority of Great Britain and the geographer to his Majesty, George III., under this treaty. And the boundary of the Potomac is placed distinctly on the left, or North bank of that river, to Point Lookout, and thence South of East to a point on the Western shore of the peninsula; and thence is drawn East to Swanscut creek on the Eastern side of the peninsula. This is the highest authority known to the law of this case. It is by and under treaty laid down with all the care and exactitude required by the exigencies of future peace and quiet possession between the two greatest powers on earth. Now is it to be supposed or imagined that Great Britain herself, in a negotiation like this, did not know the boundaries between her own provinces, and especially two of the oldest colonies, between which questions of boundary had been much mooted and much discussed before her lords of the committee of trade and foreign plantations? If her officials were not at first informed, was not the royal observatory at East Greenwich, then established nearly a century—from 1675, Newton had made all his discoveries, and died thirty-six years before; he had wrought out the puzzles of the great circle of the armillary sphere and informed the world how many English statute miles were to be allowed to a decree of longitude in the latitudes of Maryland and Virginia. Halley had succeeded Flamsteed as Royal Astronomer, and had died twenty-one years before this map was made; and is it to be supposed that Bowen, the royal geographer, would not seek the most authentic and conclusive information from the law officers of the crown, and from the state paper offices, to authorize him to lay down the boundary of Maryland and Virginia in 1763, as "determined," and as those provinces then "exercised" their jurisdictions? Whether he did or not, Great Britain so "determined," and so solemnly, that her determination there was notice given to other powers with whom she treated by which she was bound, and bound too in matters of much importance. All her provinces varied from each other in many particulars of the regulations of commerce and trade and navigation, and the vessels of France required the information as to parts of what province they entered and what regulations they were to observe. As to what the *treaty making power* of Great Britain could do with the charters of her provinces, even to annihilate them, it is supposed, admits of no question or debate. Great Britain would have ceded both provinces to France as easily as she acquired Canada, and certainly she could, as she did, fix their bounds.

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XIII.

After the restoration of the Lord Proprietor's title in 1715, and possession of Maryland, and after the treaty of Paris, in 1763, there was an uninterrupted period of peace and comity between her and the royal province of Virginia, as long as they were colonies. The boundary on the Eastern shore was by all the inhabitants of both colonies known to be settled, and there was no collision at Annamessex until lately. The Quakers, and if there were any Papists

there left on the marshes or hammocks South of the Westernmost angle of Watkins point, and North of Pocomoke sound, and West of that river, they were not disturbed by any religious persecutions, and they were too few and too inaccessible or inconvenient to the officers of the Virginia laws to be troubled by taxgatherers even, or by summons of any sort of public service; but that the mouth of what
278 was then and now called Little Annamessex, was always known and claimed to be in Virginia, in the latter end of the 18th and beginning of the present century, is known to many now living in Accomack, Virginia. True, that for the reasons already mentioned of their location, they have not voted in Virginia or paid taxes, or even in that time been treated or have acted as citizens of Virginia. But time does not run against a sovereign or state as to boundary; and Virginia has always continued to claim the tongue of land above Cedar straits and Pocomoke sound by holding and keeping her territory on the South end of Smiths island West; and as will be shown, she patented the whole extent of this territory up to 1763, and to leading citizens of Maryland. See her patents to Daniel, of S. T. Jenifer, and to Daniel Jenifer, (a register of the land office of Maryland,) and Anne Toft, his wife, and Wilbourne and others, and to John Nelson and Robert Pitts, hereto appended. The grants to some of these patentees were up to Nanticoke sound. By the by, the name Herring island, on the coast survey map is erroneous:—it should be Herne or Hern, (for Heron island). The populations of Maryland and Virginia were too similar in manners and customs and kinds of possessions, and too cavalier alike in their tone, not to assimilate and affiliate in the most cordial relations. The Howards of Maryland had been too close comrades of the Washtons of Virginia, for the Maryland and Virginia people in their homes and habitations and associations, as well as in their continental lines during the night of the revolution. The battle of the barges at and off Tangier and Watts islands in the Chesapeake bay, *the very last battle of that revolution*, was fought by Accomack, and Pocomoke, and Annamessex people, volunteers who came together like brothers and neighbors and friends, under the illustrious Whaley, a commodore of Maryland, who fell in bloody fight, and whose bones now lie not
279 unhonored at Onancock, in Accomack. The glorious good he did was not buried with his bones:—will not Maryland gratify Virginia by giving them yet a monumental stone?

Accomac county in Virginia and Somerset in Maryland had jointly contributed to build and incorporate their first academy of learning (Washington academy, near Princess Ann in Maryland). Land was given to it in Accomac: and when population so increased that Accomac could build her own academy (Margaret academy, near Pungoteague in Virginia), the legislature of Virginia, in 1790, authorized it to be sold and divided between the two academies. Such was the feeling of amity between the best of neighbors. And these people then cared not which state they were citizens of; but those of Cedar straits were most convenient to Maryand. The fisheries and fowling were superabundant, and until about forty years ago they "lived and let live," in the most friendly neighborhood and

free interchange of fisheries as well as comities of every kind. We repeat, that it was not until oyster catching and planting and packing became so profitable and worth so much, that any *"sacra fames auri"* ever disturbed that old-time state of kindness between these people. But *since,* Virginians have been arrested and tried in Maryland for fishing in her own waters.

The delegates and representatives of the several counties and corporations of Virginia, on the 29th day of June, A. D. 1776, reciting their grievances under the detestable and insupportable tyranny of George III., king of Great Britain, unanimously declared the independence of the colony, and ordained and adopted the first constitution of state government in America. Heroic as was that age, there was no act of men or states more magnanimous and exemplary than the adoption by Virginia of the 21st clause of that first con-
280 stitution, to wit: "The territories contained within the charters *erecting* the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potowmack and Pocomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. *The Western and Northern extent* of Virginia shall *in all other respects stand as fixed by the charter of King James the* 1*st, in the year* 1609, *and by the public treaty of peace between the courts of Great Britain and France in the year* 1763, unless, by act of legislature, one or more territories shall hereafter be laid off and governments established Westward of the Alleghany mountains. And no purchase of lands shall be made of the Indian nations but on behalf of the public, by authority of the general assembly."

This generous and gratuitous clause of constitutional conveyance to her sister colonies, in the act of taking upon herself the responsibilities of independence, whilst they were yet colonies, and she had no guarantee that they would back her example, is unexampled in the history of revolution. But she excepted the free navigation and use of the *Potowmack* and Pocomoke rivers, with the property of the Virginia shores and strands. And her Western and Northern extent she reserved, as fixed by the charter of 1609 and by the treaty of 1763. The latter had modified the extent of her grant in respect to Maryland. She could not, after the treaty, claim to the extent of her grant Westward. She had claimed the river Potomoke for
281 its whole extent, and she had claimed both shores of the Pocomoke, including its mouth, as high up as the Calvert and Scarbrough line ran across the Pocomoke river. Maryland was fully aware of this cession and reservation; but was not satisfied, and claimed more. She knew of the Hopton grant and of the Calvert and Scarbrough line, and that Virginia had therefore claimed both; and yet of the Northwestern territory between the Ohio and Mississippi rivers, she claimed a share.

And this brings us to

XIV.

The Cession by Virginia of Her Immense Northwestern Territory.

She abjured her colonial state without waiting for others to move, "set the first ball of the revolution in motion" from her old magazine in Williamsburg, which never ceased rolling until after ricocheting all over the continent; it stopped at Yorktown, within twelve miles of where it had started, on her own soil, and then, after independence was declared, set to with all her mighty men to form the confederation of the free, sovereign and independent states. The legislatures of the thirteen colonies, having approved and authorized their representatives in congress to ratify the articles of confederation agreed on by the delegates of the "United States of America" in congress, the 15th November, 1777, congress ratified them on the 9th July, 1778, *then* voting Mass'ts bay and Rhode Island and Providence Plantations, Connecticut, New York, Virginia, South Carolina, only six states. North Carolina, 21st July, 1778; Pennsylvania, 22d July, 1778; Georgia, 24th July, 1778; New Hampshire, August 8th, 1778; New Jersey, November 26th, 1778; Delaware, May 5th, 1779, and Maryland not until March 1st, 1781. Why did Maryland decline or fail to join the confederation of states for three years and
282 four months? She declined until the states which held the new lands of the West included in their ancient charters consented to cede them to the United States for the union and common benefit of all the states. See 10th Henning Stats. at Large, appendix "Resolutions and State Papers," pp. 547 to 567 inclusive. The circular of the president of congress, September 10th, 1779; the declaration of Maryland, December 15th, 1778; the instructions of that state's general assembly to her delegates in congress at the same date; "the remonstrance of the general assembly of Virginia to the delegates of the United American States in congress assembled, the 14th of December, 1779"; the "act of the state of New York," to facilitate the completion of the articles of confederation and perpetual union, passed 19th February, 1780, the "recommendations of congress for cessions of Western territory, September 6th, 1780, these and other causes influenced the state of Virginia to pass her resolutions of January 2d, 1781, "for a cession of the lands on Northwest side of Ohio to the United States" "on certain express conditions and reservations," among which were the following, to-wit:

"That all the remaining territory of Virginia *included between* the Atlantic ocean and the Southeast side of the river Ohio, and the Maryland, Pennsylvania and North Carolina boundaries, shall be guaranteed to the commonwealth of Virginia by the said United States."

"That the above cessions shall be void and of none effect unless all the states in the American Union shall ratify the articles of confederation, heretofore transmitted by congress, for the consideration of said states." And these resolutions caused and induced Maryland, within the then next sixty days, to join the confederation the 1st March, 1781." When granted a common benefit in all the Northwestern territory of Virginia, and accepting its reservations and con-

ditions, by joining the confederation in consideration of the
283 grant, is she not estopped from denying or disputing "the remaining territory of *Virginia?*" Can she righteously say now that the grant to Lord Hopton was bad and not recognized under the treaty of 1763, that it was not included in Virginia's reservation? that the line of Calvert and Scarbrough was never run, or, if run, that it now can not be identified and located? That the treaty of 1763 did not finally fix the limits between her and Virginia? or, if they even were not fixed as Virginia claims, can she say that Virginia *did not so mean* when she ordained her constitution of 1776, and passed these resolutions with these expressed reservations? Did not Maryland mean she would not, whether she legally could or not, dispute the remaining territory of Virginia, as *she* (*Virginia*) claimed it, when she (Maryland) accepted a grant worth millions more than the small reservations named? True, congress afterwards wisely declined the guarantee on the part *of the United States,* leaving the questions of boundary to be decided and agreed between the states themselves, or the proper tribunals to decide them judicially, if not agreed. And Virginia executed the cession without the guarantee of the United States; but was not *Maryland* bound, by accepting the cession, or her part of the cession, from Virginia, in consideration of joining the confederation? Did she not get millions over her "*quid pro quo?*" Did she not assent? Is she not morally and legally estopped from claiming now what she knew Virginia then claimed to be part of her remaining territory? Let justice and equity and considerations higher than territory or any other price plead the reply. See Tazewell's Fragment, the last report appended. The Report of Congress, 11 H Stats. at Large, appendix 567. The Deed of Cession, *Id.,* 571, made 1st March, 1784.

284 XV.

Having taken this general view of the history of boundaries between Virginia and Maryland, which it is presumed will control the decision on the fact and the law of the case, we now proceed to state and comment on the incidental facts which may prove tests of the history.

I. Patents.

We must premise that the commissioners on the part of Virginia who have heretofore acted on this question of boundary on the Eastern shore of the Chesapeake bay, have overlooked, or not been informed of a fact, which would have shown them the Eastern shore boundary *in limine;* a stranger to the history of the counties of Accomack and Northampton, or one ignorant of it, might well be deceived in looking for the patents of Virginia granted to her inhabitants, on her part of the peninsula of the Chesapeake. The colony of Virginia was divided in 1634 into eight shires, and Accomack was one of them, consisting then of the whole of Virginia's part of the peninsula. By act 13th of the year 1642-3, the name of the whole was changed to "Northampton." For the royal grants to 1642-3, one must look to the index of Accomack. After that period the index of Northampton must be looked to. Accomack

resumed her original name, (when is not shown by Henning,) and continued to be called Accomack to nearly the end of colonial times. See 1 H. S. at L., pp. 224, 249, and index of that volume under head "counties." A regiment was authorized to be raised for Accomack and Northampton by act chap. 1, December 1, 1775, showing they were then divided into Accomack and Northampton. See 9 H. S. at L., p. 76. Northampton was probably divided under a general law providing for the division of frontier counties, passed in the 3d session of the general assembly from 1702 to 1705.

285 See 3 H. S. at L., p. 284. But this is immaterial, except to note how the patents of the Eastern shore have been overlooked. Seeing no name of "Northampton" adjoining Maryland on the maps, and "Accomack" there always, the Accomack index was heretofore looked to alone. By examining the index for both of those counties, we find patents for every foot of the territory from the Western shore of Smiths island, in the Chesapeake bay, to the Eastern shore of Assateague island, on the Atlantic ocean, on the whole course of the divisional line run by Calvert and Scarbrough in 1668. To begin on the Chesapeake side:

"Patents Issued During the Royal Government of Virginia, Accomack County."

To Robert Pitts, October 2, 1663: 3,000 acres North by Pocomoke and West by the bay.

To Charles Scarborough, April 4, 1668: 600 acres, the Western islands of the Chesapeake bay.

To Henry Smith, October 9th, 1667: 1,000 acres, *Pitscraft, on Smiths island, the other half of the land granted to same man for part of same tract and the patents of each state, calling a divisional line of Maryland and Virginia.* That tract, 2,000 acres, was only to be divided by a right line, East and West, so as to lay off 1,000 acres on each side.

To John Taylor, October 27, 1673: 34 acres, Little Watts island. This is the island which the present commissioners contend was probably the end of Watkins point, on the theory of great washings away. Here it is proof it was an island in 1673, and though little then, there now it remains.

To Thomas Welburne, April 4, 1678: 83 acres, Feax or Fox island, North of Watts island. This is a group of islands which

286 the same theory claims to have been main land on part of Watkins point.

To John West, November 25, 1679: 2,500 acres, embracing Georges island in the Pocomoke river; showing that Virginia owned the islands at the mouth of that river.

To John Custis, April 20, 1680: 100 acres, Cobham's island in Pocomoke river, showing same.

To Capt. Wm. Custis, April 17, 1686; 800 acres on Feaks or Fox island.

To John Carter, October 26th, 1699: 130 acres Fox North island. This is the first South of cape at Cedar straits.

To McKenny and Jenkins, April 25th, 1702: 150 acres South end of Watts (Big Watts) island.

To same, same date: 24 acres Gabriel, alias Watts (Little) alias Goat island.

To Francis McKennie, Arcadia Melburne, Daniel of St. Thomas Jenifer, and John West, October 23d, 1703: 3,804 acres. The islands lying North of Tangier island, Herne or Hern (contraction of Heron, now laid down as Herring on coast survey map) island, and the six islands (Smiths island cut into thoroughfares) &c.; and the beginning and ending of this grant is near Nanticoke sound. Tangier and Smiths islands, and their groups of smaller islands, form Tangier sound as far north as Kedges straits between Smiths island and South marsh. South marsh and Bloodsworth island, from Nanticoke sound up to Hoopers straits, called by Smith and by the act of Virginia of 1663 the Limbo. At the Eastern head of Nanticoke sound is Monie bay, into which the only Wicommico river on the Eastern shore and Monie river empty; and Monie bay and Nanticoke river and Fishing bay all empty into Nanticoke sound. The chart of the coast survey lays it down as a part of Tangier sound, but that is an error. Those charts are not to be re-
287 lied on for names, though very accurate and reliable for topography. South of Monie bay is Manoakin river, emptying into Tangier sound; and there on the Manoakin Col. Scarbrough had his meeting with the Quakers and others, over whose doors he put the "broad arrow" (the mark of royal goods) in 1663. In a right line West of the mouth of the Manoakin is South marsh, and near the Nanticoke sound was the initial and terminating mark of this patent to Daniel of St. Thomas Jenifer and Francis McKennie among others. One of them among the wealthiest and foremost men, and the other among the foremost of divines of Maryland. One of them, Jenifer, lived at or near Annapolis, the other on the Eastern shore, not far from the locality of the patent. One of these co-patentees, Colonel John West, of Accomac, was a considerable man of his day, often in the house of burgesses of Virginia. Is it to be supposed that they did not know which was Maryland and which Virginia territory, or that they didn't know, or had forgotten, where the line of 1668 was run only thirty-five years before —that it was not far from Nanticoke sound? The patent speaks broadly, "near Nanticoke;" the meaning only of which was, that they were to go to the line between Maryland and Virginia, and when there they would be near Nanticoke. They may have erred if they went to South marsh, but if they went to Smiths island only, that is enough to show that the pretensions of Maryland are now contradicted by two of her most respectable citizens. Then it can't be said that these men conspired to take territory from Maryland. If John West was so disposed, there were two intelligent sons of Maryland to protect her interest. The truth is, that the line of 1668 cuts now not far from Nanticoke sound, and far North of Cedar straits, as proved by this patent.

To Eliza Scarborough and Arthur West, May 2, 1713: 900 acres. All Tangier island.

288 To John Marshall, June 16th, 1727: 170 acres on the bay side, &c., "to a marked oak, *being one of the division trees between Virginia and Maryland.*"

Commonwealth's Grants.

To Sacker Nelson, May 4th, 1787: 476 acres, Northerly and Easterly on Pocomoke sound, Southerly on the thoroughfare, Westerly on Tangier sound. He is the fountain of tradition, whose memory lives immortal in the title of "King Nelson," among the islands and hammocks of Tangier sound and Annamessex. See deposition. He was a grantee of part of Fox islands in Virginia.

To Richard Evans, October 31st, 1791: 47 acres, at Queen's Ridge, on the bay side, at a point of marsh near Tangier sound.

Patents West of Pocomoke; cover 13,784 acres.

These patents embrace 13,784 acres, and cover every acre of land and water South of the Calvert and Scarbrough line of 1668 main and islands, between the Chesapeake bay and the Pocomoke river; in other words, the whole of the disputed territory West of the Pocomoke river. Robert Pitt's patent calling for its North line from Pitt's creek, on the divisional line of the colonies to the bay, granted every foot of land on the main between that divisional line and the Pocomoke river and sound. The other patents embrace all the islands of the Pocomoke sound, and of the Chesapeake bay and Tangier sound, from Watts island to near Nanticoke sound. All of these granted by Virginia North of the Calvert and Scarbrough line, prior to 1668, were expressly saved to the patentees by the articles of agreement signed and sealed by Calvert and Scarbrough. Any
289 grants made by Virginia after that agreement in 1668, North of that line, were null and void to the extent of the part North; but the patents of Lord Baltimore, issued prior to 1668, for lands South of that line, *were not saved by the agreement between Calvert and Scarbrough* to the patentees of Maryland; they retained no title whatever in any name, or by any authority, and all patents granted by Lord Baltimore, subsequent to 1668, South of that line, were of course void. So much for the main territory West of Pocomoke river and North of Pocomoke sound and East of Tangier sound, and for the islands of the bay and Tangier sound and Pocomoke sound.

We now come to the territory East of the Pocomoke river, beginning at that river, where the Calvert and Scarbrough line runs East from Watkins point on the West, "over Pocomoke river."

To Robert Holston, (erroneously here Houston,) April 5th, 1666; 500 acres; bounded by the Pocomoke on the Northwest, and by Holston's creek. It was to near this Holston's that the line of Calvert and Scarbrough run.

To Col. E. Scarbrough, September 10, 1664; 2,000 acres, South by Crooked creek, near Pocomoke river.

To John Wallop, June 10th, 1664: 400 acres at Pocomoke.

To Robert Pitts, October 2, 1663: 3,000 acres; North by the Pocomoke and West by the bay, (meaning Tangier sound or bay.)

To same, March 12th 1662: 1,000 acres at Pocomoke.

To John Williams, April 5th, 1666, (same day as Robert Holston's) Patent 500 acres, (same quantity as Robert Holston's) W. S. W. by Robert Holston's; N. West by Pocomoke river.

To Thomas Davis, April 5th, 1666: 400 acres on Pocomoke.

To James Henderson, April 5th, 1666: 400 acres next Thomas Davis on the Pocomoke river.

To John Davis, April 5th, 1666: 700 acres, North by Poco-
290 moke, West by Davis Branch.

Henry Smith, April 5th, 1666: 1,700 acres on Pocomoke.

—— Radcliffe, November 9th, 1666: 1,200 acres; Pocomoke, on Crooked creek.

To Daniel Forecraft, October 30th, 1669: 600 acres, South side of Pocomoke river.

D. Browne, October 16, 1672: 3,700 acres, Jolls, (now called Jolly's Neck.) Pocomoke river.

Capt. S. Littleton, September 9th, 1674: 400 acres at Pocomoke, formerly, &c., &c.

John Washburn, April 30th, 1679: 600 acres Pocomoke river, M. Lester's land.

Col. S. Littleton, April 30th, 1679: 150 acres on the Forehead Neck, N. of King's creek at Pocomoke, on the divisional line.

John West, November 25, 1679: 2,500 acres, Pocomoke North of Messongo creek, and embracing Georges island in the Pocomoke river.

John Tankard, October 2, 1680: 2,000 acres, between Pocomoke and Chingoteague on the main.

Colonel John Custis, September 22d, 1683: 4,600 acres at Jolles or Tolls neck. Eastern part, 2,000 acres, patented by Edmund Scarbrough.

Adam ——, April 20th, 1686: 600 acres at Pocomoke.

To William Brittingham, November 7th, 1700: 96 acres, beginning at Pitts alias Kings creek, on the divisional line, &c., &c.

Nathaniel Littleton, October 24th, 1701: 150 acres on Forehead neck, North of Kings creek, on Pocomoke.

Captain Daniel Jenifer, of Maryland, October 2, 1680: 2,500 acres, between Crooked creek and the Pocomoke on the North Messango.

291 In these 23 patents, granted about the date of the Calvert and Scarbrough line, some shortly before and some shortly after 1668, we find 31,300 acres at and on the divisional line where it ran over the Pocomoke river, and thence to the mouth of the Pocomoke and the islands of the Pocomoke river, and also between the Pocomoke river and Chingoteague creek East. Many of these patents name the divisional line of the two colonies as one of the lines of the patents.

Next following the line of Scarbrough and Calvert, running East, we find the following patents:

To Daniel Selby, November 9th, 1666: 600 acres over the Swan-seacute alias Great Mattapony.

To Edward and John Smith, November 9th, 1666: 500 acres on the Mattapony.

John Pike, November 9th, 1666: 400 acres North of Dan'l Selby, at Mattapony.

To Daniel Jenifer and Ann Toft, his wife, February 12, 167½, 11,300 acres, sea-board. Stokelys branch, 5,000 acres Neck between Chingoteague and Swanseacute on the *divisional line.*

J. Wallop, alias, &c., April 9, 1674: 450 acres, Great Mattapony alias Swanseacute, on the divisional line, &c.

Major Edmund Bowman, October 5th, 1674: 2,264 acres North side of Swanseacute alias Great Mattapony on divisional line.

These six patents granted 15,514 acres at and near Swanseacute on the divisional line.

Next following the line of Calvert and Scarbrough East to the shore of the main land on the sea-side:

Col. E. Scarbrough, June 22d, 1664: 3,000 acres North of Chingoteague creek.

292 Lieut. Col. John Wallop, April 20th, 1670: 3,050 acres, Southside of Chingoteague creek.

Daniel Jenifer, of Maryland, February 12th, 167½: 11,300 acres, Stokelys branch, sea-board.

Ann Toft, of Accomack, Daniel Jenifer's wife, February 12th, 167½: 5,000 acres, neck between Chincoteague creek and Swanseacute creek "on the divisional line of Maryland and Virginia."

Samuel Taylor, April 9th, 1674: 700 acres, Chincoteague creek.

Edward Robins, May 27, 167⅝: 680 acres at Chincoteague, beginning at a divisional line between Virginia and Maryland.

Col. S. Littleton, April 4th, 1678; 1,000 acres at Chincoteague creek.

Thomas Gascoine, July 15th, 1715: 1,093 acres, head of Chincoteague creek.

These eight patents, between Swanseacute and the sea-side of the main, containing 24,730 acres, at and near Chincoteague creek, *on the divisional line,* &c.

Then following the Calvert and Scarbrough line East to the islands between the main land and the sea beach of Assateague island.

Hill Drummond, April 24th, 1700: 96 acres, Popes island, *on divisional line.*

Thence to the Atlantic shore on the beach of Assateague island:

Col. Daniel Jenifer and Wm. Stevens, April 16, 1683: 200 acres South end of Assateague island on the divisional line.

Daniel Jenifer, April 20th, 1687: 3,500 acres, Assateague island, on the divisional line.

John Morris, April 28th, 1691: 300 acres, between Chincoteague and Assateague.

293 Wm. Kendall, April 29th, 1692: 2,729 acres, Northeast end of Chincoteague, including Piney point.

John Robins, 29th April, 1692: 2,765 acres, Southwest end of Chincoteague island and island of marsh.

Capt. John Custis, April 21st, 1695: 250 acres, Northern end of Chincoteague island.

Wm. J. Aydelotte and Benj. Blades (one of the present commis-

sioners of Maryland), 30th July, 1841: 880 acres on Assateague island.

These seven patents granted 10,624 acres on Assateague and Chincoteague islands to the ocean, between it and Popes island, two of them on Assateague calling for the divisional line between the colonies of Virginia and Maryland. I have cited those on Chincoteague island to show that no colonial line ever cut that island. Its North end is nearly up if not quite to the line of 38° N. L. by the best charts furnished by the coast survey office, the parallel of 38° passes the North end of Chincoteague three-quarters of one mile, and the Calvert and Scarbrough line cuts Assateague island North of that parallel two miles. It is just about as far North of that parallel on the sea-side of the peninsula as it is South of it on the bay side thereof. A right line from Smiths point to Swanseacute, or from the same point to the terminus of the Scarbrough and Calvert line on the Eastern shore of Assateague island, either will cut the mainland at Cedar straits. Drawn from Smiths point due East it terminates on the sea shore South of Chincoteague island, and it would give to Maryland an average breadth of eight miles of territory East of the Pocomoke river to the sea, which at no time did she ever claim. *East of that river to the sea South of the Calvert and Scarbrough line*, Maryland never laid a patent. There her citizens on the line pay taxes in both states now; and Mr. Aydelotte,
294 of this commission, by accepting his patent on Assateague island—anywhere on it—recognizes the fact that the Calvert and Scarbrough line runs North of an East line from Cedar straits or from Smiths point.

Besides the foregoing patents from the Accomac Index, we add the following from the Northampton Index:

Miles Gray, March 26th, 1672: 400 acres, branch of Great Mattapony, alias Swanseacute.

Daniel Jenifer, February 12th, 167½: 5,000 acres, but called Chincoteague, granted to E. Scarbrough in 1664. Residue lying on the N. W. side of the 3,000 acres.

William Whitington, October 2d, 1672: 5,000 acres. All Chincoteague island.

Capt. John West, October 3d, 1672: 1,000 acres at Chincoteague (on the main) South by Capt. Richard Hill and Northeast by Capt. Daniel Jenifer.

Thomas Nickerson, October 9th, 1672: 400 acres at Chincoteague, adjoining John Wallof.

John Robins, October 7th, 1672: 500 acres at the seaside, Southwest by the land of Southey Littleton, Northeast by the divisional line between Maryland and Virginia.

These patents granted 12,300 acres at and near the line.

The quantity of land in the grants of these different sections amounts to 95,952 acres, nearly one hundred and fifty square miles, on a line from the Chesapeake bay to the ocean, forty-five miles in length from the Western shore of Smiths island to the Eastern shore of Assateague island. And the part of this line North of the 38th parallel, lying East of the Pocomoke river, Maryland don't

pretend to dispute, whilst she claims all South of the line West of the Pocomoke river and North of the Pocomoke sound,
295 though the line there is South of the 38th parallel.

These are strange facts, to be accounted for only by oysters! Virginia granted an average of three and a third square miles for every mile on this line.

County Bounds.

We can't find any North bounds of Accomack in Virginia, except the Virginia and Maryland line. But the commissioners on the part of Maryalnd have produced a commission from the proper authorities of the county of Somerset, Maryland, to certain commissioners, to *"lay off so* much of Smiths islands as lies within the body of Somerset county aforesaid, into a separate and additional election district, before the 1st April, 1835. Commission is dated 8th April, 1835. Return dated 16th June, 1835." "In pursuance of the said order, we have viewed, laid out, and return the as follows for said election district, to wit: Beginning on the East side of said island, at a place well known by the name of 'Drum point;' thence Westerly cross to the bay to a hammock called Sassafras, lying on the bay shore: thence by and with the bay up to Kedge's straits; thence by and with the sound to 'Drum point'. And that we at the same time have elected the Methodist meeting house as the most suitable and convenient place for holding the elections in said district."

By embracing all of the island which laid in Somerset county, it embraced all of it lying in Maryland. Somerset county extended North to the Nanticoke.

Here then we have a late report of Somerset's own commissioners setting forth all of Smiths island in Maryland. The district bounds began at "Drum point." See the charts of coast survey. "Drum point"' is North of Little Annamessex river on the main. It is but *one mile* south of the 38th parallel of latitude and below
296 Barnes point, on the East and West line of which the stones (Potomac stones) apparently were found, said to be boundary marks between the two states. Yet John Cullen, (see his deposition,) one of the commissioners, swore before these present commissioners that he always deemed and held Horse hammock, on Smiths island, over two miles South of "Drum point", to be in Maryland, and Maryland appointed a justice of the peace residing there as late as ——. (See deposition.)

But John Cullen ought to have known better. He was the justice who arrested John Tyler, a Virginian, for catching oysters at Filleby's Rock, North of the Great Rock, arrested just off Horse hammock, in the schooner Fashion. Tyler was acquitted by the Somerset court on the ground he was not oystering in Maryland waters; sued Cullen in the Circuit court of the 8th judicial circuit of Maryland, held 3d October, 1854, for arresting and detaining him and his vessel, and recovered a judgment for $1,000 damages and costs. See records of the court appended.

This was as late as 1854, and the Hon. Isaac D. Jones, Esq., was one of the counsel in the case for Cullen. See the two records.

Again, the commissioners of Maryland exhibited "Maryland council proceedings, Liber H. H., folio 268. Commission to Stephen Horsey and others, to lay out a county, bounded on the South by a line drawn from *Watkins point*, being the North point of yt bay into which the river Wighco, (formerly called Wighcocomaco, and afterwards Pocomoke, and now Wicocomaco again,) &c., to the ocean on the East, Nanticoke river on the North, and by the sound and Chesp. bay on the West, to be erected into a county, by the name of Somerset, in honor of our dear sister, Lady Mary Somerset." 22d August, 1666.

297 Now this clears away all mists from these marshes obscuring doubts about where *Watkins* point was *and is*. Smith's map placed it exactly where this council of Maryland describes it, and exactly where Calvert and Scarbrough ascertained it to be in 1668. The point described by this paper is undoubtedly the point of Watkins point *at Cedar* straits. Calvert and Scarbrough did not start at that part of Watkins point, but at the extremest part of its Westernmost angle. This is tested by the line being a right, East line. Then we have certified beyond all peradventure that Maryland authorities, metropolitan and county, colonial and state, have known where Watkins point was all the time ever since 1666. *That happened to be exactly two years before the Commissioners, Calvert and Scarbrough, 1668, determined* the part of Watkins point from which the line should be run East, ordered by the charter of Maryland to be a right line. Cedar straits never was and is not now the Westernmost angle of Watkins point, and did not draw the commissioners, in 1668, that far South; but the legal and logical effect of their "articles of agreement" was to draw the Southern boundary of Somerset county from Cedar straits up to the North headland of Little Annamessex river to another part of Watkins point. And what becomes of all the speculation about a proclamation of Governor Harvey, of Virginia, recognizing Maryland's right of Indians to traffick down to Onancock, below Little Watts island? What of the theory of the washing away of Watkins point? What of the traditions of the sayings of King Nelson—by the by, in justice to his majesty's knowledge of the affairs of the god Terminus, he may "have known *Summerset county's* boundary to have been fixed on the North end of Big Fox island at the Cedar straits in 1666.

298 After these records, can there be any pretense of doubt about where Watkins point is, or is not all doubt about where it was, and is now, a mere pretence?

Again there is another record of Summerset county, viz: "The following is among the orders agreed upon by ye commissioners of Summersett countie, this 17th January, 166 6-7."

"Present: William Stevens" (the assignor of Pittscraft to Henry Smith), "Captain Wm. Thorne, Mr. James Jones, Mr. John Winder, and Mr. Henry Boston, Mr. George Johnson and Mr. Stephen Hersi, high sheriffs.

"The highway for the county of Sommerset "from ye landing place upon Capt. Goyeder's land in Pocomoke river to Maurumsco dambs, near ye house of Robert Kignitt, and from thence doune to the head of Thomas Price's neck to ye head of William Coleburne's

creek. And from ye head of Will. Colburns creek to *Watkins point* from ye dambs yt lyeth by Robert Hignetts to ye lower dambs yt lyeth at the head of Annamesseck river; from thence to ye lower dambs yt lyeth at ye head of Back creek of Manokin river, and from thence to ye head of Manokin river, and from thence to the head of Wicocomoes creek."

This is from a certified copy.

Again: Same day and year is—

"The bounds of Annamessicke Hundred.

"Annamessicke, beginning at *Watkins point,* running to the mouth of Marumsco creek, up ye Westernmost side of ye said creek to Marumsco dambs, and from *Watkins point* to the Northpointe of Annamassicke river, and from thence running up ye midst of ye neck of land 'called desert.'"

Thus the bounds of county, of highway, of hundred, of Summerset county, called for *Watkins point* North of Pocomoke sound.

Again: See same book of records of the council of Mary-
299 land. It is supposed Summerset was organized out of Dorchester county, Maryland. Worcester county, adjoining Accomac county, Virginia, was laid off from Summerset. Now Worcester borders on Virginia by a right line East, and has never been disputed or questioned since 1668. Worcester was laid off in 1742 on that part of the line formerly of Summerset. Is that *right line* "agreeable with" an East line from Cedar straits or an East line from the North headland of Little Annamessick? Michler's Map and line, continued by De la Camp, will show.

Somerset's Southern boundary was obliged to be a right or an East line. Part of her Southern boundary became the Southern boundary line of Worcester county, which was carved out of her. Then, when Maryland, in 1742, ascertained the right line for the Southern boundary of Worcester county, she at the same time conceded and admitted what was Somerset county's right line on her Southern border. If the Scarbrough and Calvert line was the true Southern bounds for Worcester county, it was of course the true Southern bounds for Somerset county.

See copy of deed to John Tyler from Henry Smith of the county of Summerset, Maryland, 1693, conveying Pittscraft on Smiths island. Also, copy of paper found in the possession of Alexander Tyler on Smiths island, describing a survey of land, part in Virginia and part in Maryland. Also, copy of deed from Elisha Crocket and wife to Richard and William Evans, found on Smiths island, dated 30th August, 1828. Also, copy of deed from Jacob Sparrow and Teakle Evans, found on Smiths island, dated 24th September, 1844.

We are informed also by Mr. Aydelotte, one of the commissioners on the part of Maryland, that a patent ought to be found from Virginia for a part of "Troy point, owned by John Mason; the
300 extreme Northeast main land of Accomac; a large body near to Sandy Hill in Worcester county, Maryland, part in Ac-

comac county, Virginia, and part in Worcester county, Maryland; all now occupied by Judge John R. Franklin, who now pays taxes in both Maryland and Virginia."

If these tests of the true boundaries of the two colonies and states of Virginia and Maryland, both on the Eastern and Western shores of the Chesapeake, are not sufficient, there are abundant other proofs in the county surveys, of lands under private deeds; of old vestry books of the Church of England in Virginia during colonial times; and of ferries (as to which see McDonald's first report), and of maps. We have not been able to examine and elaborate any but the last. But there is one test which is singular—the location of the Crisfield railroad. The line of De la Camp, continuing the Calvert and Scarbrough line West from Swanseacute, cuts the Southwestern corner of the wharf of that company at Chrisfield. The line passes James Taw's house at the head of Somers cove, and cuts the Southwest corner of the wharf of the Chrisfield railroad. How came that road located at its terminus exactly *adpunctum* on the Calvert and Scarbrough line? Did Tyler's trial and acquittal, and his recovery of $1,000 in Maryland's own circuit court of Summerset in 1854, wherein Mr. Crisfield, after whom the town of Crisfield is called, was counsel for Tyler of Virginia, and Mr. Jones, of the present commission, was counsel for John Cullen, of the election district commissioner on Smiths island, teach the stockholders of that railroad where, to a pin's point, to terminate that road? If it was accident to terminate where it does, it was an accident of so rare occurrence that any insurance company might insure against its recurrence at the least appreciable fraction of one per cent.

We forego such further enquiries. They are vain. We
301 can't treat Watkins point, and the part of it from which the boundary line East was run "over the Pocomoke river," as a fable or a myth. It was agreed, it was sealed, it was approved and established. If not exactly a due East line, it was near enough to a right angle with the meridian to be deemed established. It was established by a sealed and recorded and admitted agreement, and there is no possibility of destroying its identity or doubting its verity. Tradition can't run against the record; and limitations can't run against a state boundary. That question the Supreme Court of the United States has decided in the case between Massachusetts and Connecticut.

We have but few words to add about maps. We will abide by Smith's Map of 1629; by Bowen's Map for the Eastern shore boundary, and by the map of the treaty of 1763; and by Augustine Herman's Map, furnished or adopted by Lord Baltimore, and by Lord Baltimore's claim against Penn: that the boundary on the Eastern shore was, at the time of 1681-2, settled by commissioners, and the claimed so far South only as Watkins point. The whole matter was concluded against all theoretical speculations, and against all time of possession, and against all traditions, and patents, and ferries, and boundaries of counties, and hundreds, and highways, in 1668, by Philip Calvert and Edmund Scarbrough. It is unnecessary, and would be but supererogatory to recapitulate the evidences of right to the whole river of Potomac.

Virginia claims the river Potomac to the left or North bank on the Western shore, and to Scarbrough and Calvert line on the Eastern shore of the Chesapeake, from Point Lookout to the extremest part of the Westernmost angle of Watkins point, the promontory formed by the North headland of Little Annamessex river or creek, on the Eastern side of Tangier sound, which head-
302 land, or promontory, is the initial and terminating point of survey between the two States of Maryland and Virginia, ascertained, agreed and fixed as described A. D. 1668, by and under their joint and several proper authorities, and by them approved and adopted.

HENRY A. WISE,
D. C. DEJARNETTE,
WM. WATTS,
Commissioners on the Part of Virginia.

303 C.

Appendix to the Report of Virginia Commissioners on the Maryland and Virginia Boundary.

304 Extracts from Letter of E. W. Hubard to H. A. Wise.

The following is a letter from the Hon. E. W. Hubard to Mr. Wise, on the Boundary Commission, from his residence in Buckingham, on the subject of the chartered limits of Virginia, as reported upon by him when in the H. Reps. of the Congress of the United States:

"SARATOGA, *Sept. 6th*, 1872.

Hon. H. A. Wise.

"MY DEAR SIR: Your letter asking me whether I had the 'original' paper written by Mr. Tazewell for me in support of the right and title of Virginia to the land West of the Ohio, ceded by Va. to the U. States in 1784.

"Having solicited Mr. Tazewell and Mr. B. W. Leigh to aid me in vindicating the right and title of Virginia to the land ceded the U. States Government, which had not only been assailed, but *denied* by Hon. H. Hall, of Vermont, in one or two most villainous reports; one a select committee of 5 members, composed of Messrs. Goode and Goggin, of Va., and Stanley, of N. Carolina, and Cane Johnson, of Tennessee, and Hiland Hall. The Legislature of Virginia, nevertheless, again appealed to Congress in behalf our *Revolutionary* land-bounty claimants, asking Congress to pay the claims *outstanding;* many being amongst the best claims, as for instance for Gen'l Thomas Nelson, and others, &c. * * *

"These resolutions from our legislature were *referred* to the Committee on Public Lands. When taken up by the chairman of the committee, he (Collamer), in a contemptuous and sneering manner, held the resolutions up and asked what member of the com-
305 mittee *of the committee* would *venture*, after the crushing and damaging reports of H. Hall, to again recommend to congress to pay those claims? Each member *declined*, and he appealed to me.

Of course I could not; so I undertook the task, and decided to do all I could in behalf of the state, her citizens, her honor, and rights. Being, as you know, a farmer, &c., I ventured to invoke the aid of two of our greatest men. * * *

When the report was printed by congress I had copy of each *bound* for Mr. Tazewell and Mr. Leigh, and I wrote on those copies the portions furnished and written by each one of them, and forwarded them by mail. As requested by Mr. Tazewell, *I returned to him his manuscript in full.* It was very neatly and *elegantly* written on foolscap paper. I may add, that I adopted all Mr. Tazewell wrote and *nearly* all furnished by Mr. Leigh, and only omitted portions wherein both urged the same views; and might well have left out *more* of Mr. Leigh's, as Mr. Tazewell had argued the points. And, even then, curtailing Mr. Leigh's contribution, I had to retain portions presenting similar views in some respects to those urged by Mr. Tazewell.

* * * * * * *

Mr. Leigh not desiring the return of his manuscript, it was perhaps lost after being copied. Both contributions bore evidence of careful study and preparation, and were very well and neatly written.

* * * * * * *

See Report, 28th Congress, 1st Session, No. 457; Issue of Scrip. &c., &c., May 2d, 1844.

"Mr. Tazewell's portion of this report commenced at page 3 and closed at page 21.

"Mr. Leigh's commenced at the close of page 21, and closed
306 at page 29.

"Yours truly,

(Signed) "E. W. HUBARD.

307 *Verbatim Copy of a Congressional Report.*

Rep. No. 457.

28TH CONGRESS, 1*st Session.* *Ho. of Reps.*

Issue of Scrip, &c.

(To accompany bill H. R. No. 353.)

May 2, 1844.

Mr. Hubard, from the committee on Public Lands, made the following

Report.

The Committee on Public Lands, to whom the following resolutions were referred—the first on the 4th of January, and the second on the 25th of March, 1844, viz:

1st. "*Resolved,* That the Committee on Public Lands be instructed to inquire into the expediency of reviving the law authorizing the

issue of scrip upon Virginia land warrants, and of authorizing the reception of such scrip, and all other scrip issued by the United States in lieu of, or in payment for, land or land claims, to be received in payment for lands subject to private entry in all land offices in the United States."

2d. "Resolved, That the Committee on Public Lands be
308 instructed to inquire into the expediency of making an appropriation for the payment of Virginia revolutionary land bounty warrants, which have been issued, and are still due, to revolutionary soldiers and officers, or their heirs."

submit the following report:

That in the investigation of the subject referred to in the foregoing resolutions—adopted on the motion of Hon. G. M. Bower, of Missouri, in the first instance, and on the motion of Hon. D. M. Barringer, of North Carolina, in the second place—the attention of the committee was particularly called to report No. 436, 1st session of the 26th Congress; and to report No. 1063, 2d session of the 27th Congress. The first report alluded to, emanated from the Committee on Revolutionary Claims; and the second, from a select committee; both of which, however, were introduced into the House of Representatives by Hon. H. Hall, of Vermont.

As the subject now to be considered has been several times reported upon by committees of the House of Representatives, it is deemed proper to examine those reports, with the view of ascertaining the various points of difficulty, as well as their relative merits, so that a full and fair statement of the case may be presented. The importance of the subject, no less than the *manner* in which it has been discussed, demands a frank and candid review of some of the more prominent allegations urged in those reports against the justice and validity of the claims to bounty land remaining unsatisfied. Equally obnoxious to just criticism is their concluding recommendation, based, as will hereafter be shown, upon the most extravagant assumptions, and suggesting to this Government, under such circumstances, to disregard its positive stipulations. Those reports, after urging various *conjectural* estimates about the *number* of persons
309 who might be entitled to bounty lands, so as to arrive at the least possible number; then by scanning and *denouncing* in the most extravagant terms a *given* number of claims which *had* been allowed;—thus, by *such* a combined method of magnifying the proportion of bad claims, and diminishing the number of those which were at any time due, they endeavored to dissuade Congress from doing justice. But, notwithstanding previous committees have resorted to this double system of destroying the claims, yet, even in their *own* estimation, they had *failed* to demolish *all* of them. However, it seems they had, in their opinion, at least, so crippled and damaged them in the public estimation, that they could with impunity venture to suggest to Congress to give the *"coup de grace"* to all those claims which they deemed *impregnable* to their assaults.

Nor has the learned effort which has been made to impugn and invalidate the ancient limits and boundaries of Virginia, and her

right to the immense northwestern territory which she ceded to the Federal Government, escaped observation. This topic, however irrelevant all enlightened statesmen must admit it to be, has, it seems, been introduced, along with other no less pertinent considerations, to disparage whatever of credit it has heretofore been conceded Virginia justly acquired by ceding to this Government her northwestern territory, and to that extent to impair the equitable rights of the claimants, and to justify Congress in refusing to comply with its stipulations entered into with Virginia at the time she made her deed of cession. In report No. 1063, 2d session of the 27th Congress, from pages 49 to 63, an elaborate effort is made, in the first place, to distort and curtail the ancient boundaries of Virginia, in the second to show that she had no chartered or colonial rights; and in
310 the third, no substantial or valid claim to the territory which she ceded to this Government. We propose, first, to examine the arguments of Mr. Hall upon each of the three points last mentioned, and shall take them up in the order in which they are stated. We are induced to take up the several objections urged in the reports alluded to, not in the order in which they are presented, but rather in their chronological order, because it enables us to present a more connected and intelligible view of the subject which has been referred to us. To appreciate more fully the bearing which it was designed the points just stated should have on the subject now to be considered, we will cite the proposition discussed in report No. 1063, page 43, which gave the author of the report a pretext for indulging in the course of argument we propose first to review. It was as follows: *"That the United States are under obligations to Virginia to satisfy the claims."*

It seems to have been supposed, by the committee formerly having this subject under consideration, from the very great extent of learning devoted to this branch of their argument, as presented in their report, that, if they could divest Virginia of all tenable right and title to the territory which she ceded to this Government, her citizens would necessarily be deprived of one of their strongest reasons for appealing to the equity and liberality of Congress. But it will readily be perceived that any *"ex parte"* and laborious effort made by a committee of the House of Representatives to invalidate the just claim of Virginia to the land which she ceded, and thereby to detract from her dignity and character, imposes upon Congress the duty of *"audi alteram partem."* Indeed, it is most obvious
311 that, unless this is done, a decision cannot be impartial or just. After a full examination of this branch of the subject, having arrived at conclusions entirely the opposite of those expressed in the report under review, we proceed to advance the facts and reasons which have irresistibly led us to differ with Mr. Hall *"toto cœlo."*

To determine the original limits of the country now called Virginia, it is necessary that we should go back to a period of history antecedent to even the discovery of this region. In this history, we shall find that the whole continent of North America fronting upon

the Atlantic ocean, was called Virginia, long before any portion of that particular district that now bears this name had been discovered. The Spaniards, who had first discovered the southern part of this continent in 1512, had named it Florida, on account of the gay and beautiful appearance of the great variety of flowers they found flourishing there. But afterwards, in 1584, when the English also discovered it further to the northward, Queen Elizabeth was pleased to name the country Virginia, as a memorial that this happy discovery had been made in the reign of a virgin queen.—(See Hakluyt, vol. iii, page 246.)

By letters patent granted by Queen Elizabeth to Sir Walter Raleigh which bear date March 26, 1584, she gave to him, and to his heirs and assigns, "free liberty to search for and find such barbarous lands not possessed by any Christian people, as to him may seem good, and the same to occupy and enjoy forever." This grant was without any other definite limits. (Hakluyt, vol. iii, page 243; also, Williamson's History of North Carolina, vol. i, page 219.)

In pursuance of this grant, Sir Walter Raleigh fitted out a small squadron, under the command of Sir Richard Greenville, to take possession of his newly acquired and unbounded territory;
312 and a small settlement was actually established, on the 25th of August, 1584, on Roanoke Island, in the present state of North Carolina. This was the first settlement made by the English in Virginia, and the first British settlement established anywhere on the continent of North America.—(See Halkuyt, vol. iii, page 251.)

Owing to many causes, and after various adventures, which would be unnecessary to mention here, this first settlement was abandoned by its founders in the year 1590; and we know nothing certainly of the fate the unfortunate colonists who were then left there.—(See Smith's History of Virginia, vol. 1, page 105.)

No other attempt to settle any colony in Virginia was made during the reign of Queen Elizabeth, who died in 1603, and was succeeded by King James the First. But in the year 1606, this prince issued his letters patent for that purpose, which letters bear date April 10, 1606. By these, he divided that portion of Virginia which stretches from 34° to 45° of northerly latitude, into two districts. In one of these districts, called the First or Southern Colony of Virginia, he authorized Sir Thomas Gates, and others, his associates, mostly resident in London, to plant a colony wherever they might choose, between 34° and 41° of north latitude; and he vested in them a right of property in the land, extending along the seacoast fifty statute miles on each side of the place of their first plantation, and reaching into the interior 100 statute miles from the seacoast. The other of these districts, called the second or Northern Colony of Virginia, he allotted for the settlement of Thomas Hanham, and others, his associates, mostly residents of Bristol, Exeter and Plymouth. These he authorized to plant a colony, wherever they might choose, between 38° and 45° of north latitude, and he gave to them a
313 territory of similar limits and extent to that given to the first colony. He provided, however, that whichever plantation of the said two colonies should be last made, should not be within

100 miles of the other, that might be first established. One of these two colonies (the first) was soon distinguished as the London Company; and the other (or second) was known as the Plymouth Company; but, in after time, these names were dropped, and the name of Virginia, which was at first applied to both the colonies, was retained by the southern colony only, while the northern colony was called New England—(For a copy of this charter, see Stith's History of Virginia—appendix, No. 1.

The London Company commenced its operations before the Plymouth Company. The former fitted out a small ship of 100 tons burden, and two barques, the command of which was given to Captain Christopher Newport, who sailed from Blackwell, December 19, 1606, his first destination being Roanoke island, in quest of the unfortunate adventurers left there many years before. Newport had a very long passage, and before he reached his destination, his little fleet encountered a severe southern gale, the violence of which was such as to oblige them to scud before it under bare poles one whole night. This was fortunate; for, in running in for the land the next day (April 26, 1607,) they luckily fell in with the capes of Chesapeake bay, and entered this great estuary. Pursuing their course along the southern shore of the bay, they came to the mouth of a noble river, called by the natives Powhatan, but which Captain Newport named James river, after his sovereign. Up this river they sailed about 40 miles from its mouth, in search of a proper place whereon to plant the intended colony. Such a place they at length found, in a peninsula on the northern side of the river, connected with the mainland by a narrow isthmus of naked sand, easily to be defended against any attack, let it come
314 from *from* what quarter it might. Here the adventurers landed on the 13th of May, 1607, and here they established their first habitation, to which they gave the name of "James City," in honor of King James I, the reigning monarch.—(See Smith's History of Virginia, vol. i, book iii, chap. i, page 149, &c.)

The facts stated above will enable us to determine, and with great accuracy, the limits of the grant made to the London Company, by their first charter of April 10, 1606. If a meridional line be drawn through James City, and extended each way to the distance of fifty statute miles from it; if parallels be drawn through the extremities of this meridian, and extended to the seacoast; if one hundred statute miles from thence be laid off upon each of these parallels; and if a straight line be drawn from the extremity of one of them so determined, to the extremity of the other, the diagram so to be constructed may be considered as a square, the base of which will be one hundred statute miles, and its area ten thousand square miles. Such a diagram, so constructed, will be delineated in precise accordance with all the calls of this charter of April 10, 1606.

We need but cast our eye upon any map of this region to determine the ridiculous absurdity of confining the territory intended to be granted by such limits. The only apology that can be offered for such an act, is, that the charter was granted before the country

to which it was designed to apply was discovered. More than one moiety of all the lands within the prescribed limits will be found covered by wide and deep water-courses. By these the dry land will be found divided into many small necks, widening as you advance, upwards, and separated from each other by streams, the width and depth of which were such as to render them often im-
315 passible and always dangerous; and the first plantation intended to be, and that long continued to be, the metropolis or chief place of the colony, will be found very near the western and most exposed frontier of the territory. Hence, every hope of the future prosperity, and even of the security and safety of the infant colony, required that the limits given to its territory should be speedily changed and enlarged.

This was not a matter of speculation. In the year 1608 the country had been explored in every direction, throughout its whole length and breadth, and far beyond either, by the celebrated Captain John Smith, whose wonderfully accurate description of it, given in his report, we still have. (See Smith's History of Virginia, vol. i, book 3, chapters 5 and 6, and the map.) Induced by his report, as well as by many defects experience had proved to exist in the form of government for the colony that had been prescribed by their charter, the London Company applied to the King to alter this charter, and it pleased his Majesty, King James the First, to grant their petition. Accordingly, on the 23d of May, 1609, he issued new letters patent of that date, for this purpose. At the date of these new letters patent, nothing existed to prevent such an extension of the limits of Virginia as was thereby made, because no settlement had then been made anywhere by the Plymouth Company; so that the whole country granted was as open to the new grant as it had been in 1606.

Before this second charter was granted to the London Company, the well-known headland on the northern side of James river, at its mouth, had been discovered and called by the name it still bears—Point Comfort. Taking this well-known and well-established position as a starting point, the new charter granted to the company "all those lands, &c., situate, lying and being in that part of America called Virginia, from the point of land called
316 Cape or Point Comfort, all along the seacoast, to the northward, two hundred miles; and from the said point of Cape Comfort, all along the seacoast, to the southward, two hundred miles; and all that space and circuit of land lying from the seacoast of the precinct aforesaid, up into the land, throughout from sea to sea, west and northwest; and also all the islands lying within one hundred miles along the coast of both seas of the precinct aforesaid."—(See a copy of this second charter in Smith's History of Virginia, appendix No. 2, page 8, &c.)

As one of the purposes of this second charter is declared in it to be "to grant a further enlargement and explanation of the former grant" of 1606; and as no other change is made in the mode of determining the new and enlarged limits, from that required for determining the old boundaries, except that the precise point of Cape

Comfort is substituted for James City, we are bound to adopt the same mode of determining the new limits which had been adopted and approved in the former case.

Therefore, if a meridional line be drawn through the point of Cape Comfort, and extended each way to the distance of two hundred miles from thence; if parallels be drawn through the extremities of this meridian, and extended from sea to sea, (*i. e.* from the Atlantic to the South sea, or Pacific), the diagram so to be constructed may be considered a parallelogram. The base of this parallelogram will be the seacoast of the Atlantic, having a meridional length of four hundred miles, bisected by the parallel of the point of Cape Comfort, and the altitude of this parallelogram will be the distance from sea to sea.

If any one is curious to know why Virginia was extended precisely two hundred miles to the north of the parellel of the point of Cape Comfort, his curiosity will be satisfied if he will take the trouble to calculate the difference of latitude between that
317 parallel and the more northere parallel of 40°. In making this calculation, he must make some small allowance, however, for the trifling error caused by the imperfection of the clumsy instruments used in 1609 for making observations of latitude; as well as for the erroneous opinion then entertained as to the length of a degree of a great circle in English statute miles. We know now the exact quantity of each of these errors in our case; but it must be recollected that one of them (the last) puzzled Sir Isaac Newton almost a century after 1609, and delayed the publication, because (owing to this error) he could not demonstrate the truth of the greatest of his astronomical theories. Correcting his calculations in this way, the curious inquirer will so discover that two hundred English statute miles, measured along a meridian from the parallel of the point of Cape Comfort, will carry him to the parallel of 40° north latitude; which last parallel, as will be shown hereafter, was then made the common boundary between the two great-districts of Virginia and New England.

The distance from Point Comfort north being determined in this way, there was no possible objection to adding an equal distance from the same point south; for in that direction no grant had been made, which, by any possibility, could interfere with the extension of Virginia. Thus the new boundaries given to Virginia by the charter of May 23, 1609, were, in fact, these: On the north, the parallel of 40°; on the south, the parallel of 34°; on the east, the Atlantic ocean, between these parallels; and on the west, the Pacific ocean, between the same parallels.

These wide limits were very much contracted in after time, in many different ways: 1st. By the grant of Maryland to Cecilius Calvert, baron of Baltimore in Ireland, made by Charles the First, on the 20th of June, 1632. 2d. By the grant of North Carolina to the Earl of Clarendon and others, proprietaries of that prov-
318 ince, made by Charles the Second, June 30th, 1665. 3d. By the grant of Pennsylvania to William Penn, made by Charles the Second, March 4th, 1681. 4th. By the treaty made between

Great Britain and France (commonly called the treaty of Paris, because it was concluded at Paris), on the 10th day of February, 1763; and 5th. By the constitution of Virginia herself, adopted June 29, 1776. Deduct from the area of the parallelogram before mentioned the several territories carved out of it by the various acts to which we have referred above, and the remainder of this area will represent what Virginia was on the 4th day of July, 1776—when she too, like other colonies, became a free, sovereign, and independent State.

Having shown that the description of the boundary given to Virginia by her second charter, in 1609, was neither indefinite nor unintelligible, as this report asserts, and has attempted to prove under its first head, we will now examine the second proposition. In this, the author seems to have changed his opinion upon the subject; because he here attempts to show that the boundary called for by this charter *in* quite definite and intelligible, being the arc of a circle. The centre, radius, and chord of this arc he states very plainly; but with what truth, it will be our present purpose to examine.

Not being able even to imagine a reason which could have induced the grantor of this charter to establish a confined circular boundary as that of the new colony, then very recently settled in Virginia—this, too, when the year before only (in 1608), the same King had granted to Sir Robert Heath that immense territory, comprehending six degrees of latitude in breadth, and extending in length along one side of Virginia, from the Atlantic to the South sea; and had granted a few years afterwards (in 1620) to the Duke of Lenox and others, another vast territory on the other side
319 of Virginia, including eight degrees of latitude in breadth, and extending in length from sea to sea,—the committee apprehended that they might have mistaken the purport of this report. To ascertain whether this had been done, it has been carefully re-examined.

This second examination not only sustained the first impression as to the meaning of the report, but also that, if the report was right, such a "circular boundary," was not uncommon, "in ancient charters of the Crown;" that, in this case, it was "precisely that described in this charter;" and that it was the only boundary which could give "force and meaning to every word of the grant," and answer every object which could have been in contemplation of "either the Crown or the grantees."

On examination, we discovered that all these declarations, so positively announced, had no other foundation than the ignorant or wilful perversion of the meaning of a plain and well understood English word.

It is obvious that the author of this report has confounded the meanings of the word- *circuit* and *circle;* and as the former of these words is used in this charter, he is so led to his conclusion that the boundary it denotes must be circular!!! *Tantoene animus coelestibus iroee?*

That there may be no doubt of this, read his own words: "It is an established rule of construction, that every word should be allowed a meaning, and to have been used for some assignable pur-

pose. The Virginia construction seems to be in opposition to the word *circuit* used in the description, which appears to have no application to a territory extending between direct and straight lines, from the Atlantic to the Pacific ocean. For the description of such a territory, the word *space* would have been proper and sufficient; but the words *space* and *circuit*, in connexion, seem wholly inap-
320 propriate. To give force and effect to the word *circuit*, some other construction must be sought." This other construction he afterwards gives thus: "If Cape Comfort be taken as the centre of the arc of a circle to be extended from, &c., it will be found that the general direction of the line of the circle as &c., the territory thus included will be precisely that described in the charter, viz: all that space and *circuit* of land lying, &c.," and he afterwards cites "the northern boundary of Delaware, as arising out of the description in *an ancient charter of the Crown*." (!!!) and as an example to show "that a circular boundary (for Virginia) is not an improbable one." Therefore there can be no doubt that it was the misapprehension of the true meaning of this word "circuit," which induced this author to commit so many mistakes as he has here exposed.

It is not very probable that any English scholar would have committed such a blunder; or that any English lawyer could have fallen into such a mistake; or that any geometrician, with this charter before his eyes, could have been betrayed into errors so flagrant.

The signification of the word *circuit*, is any space of extent that may be measured by travelling about it, whether the space be circular, elliptical, triangular, square, or polyhedral. In this sense it is always used by the English lawyers when they speak of the circuits of their judges; and in the same sense it is used in common parlance every day, as the author of this report may readily discover, if he will but propose to any of his fellow-citizens to take a walk, and in it to make a *circuit* of any *square* in the city of Washington.

Before, at, and long after, the date of this charter, the word "cir-
cuit" was often used in English grants of land; and when so
321 used, it was employed in the sense we have given above. In this sense it is very nearly, if not precisely, equivalent to the word "*precinct*," that will be found connected with it, generally, in all such instruments. In illustration of this, several grants of land in Virginia, bearing date between the years 1623 and 1640, may be cited. In each of them, after describing the boundaries of the land designed to be given, the patent conveys all the land "within the space and circuit aforesaid;" and in granting the franchises and privileges appurtenant to the land, such as the rights of fishing, hunting, hawking, fowling, &c., &c., the patent uses the terms "within the precinct aforesaid." Yet the land conveyed by each of these grants is a true rectangular parallelogram, having the length of a statute mile, and a base or breadth of fifty poles.

Had the learned author of this report been better acquainted with the English language, as it was used and understood, both in England and Virginia, from the reign of Queen Elizabeth to the restoration of Charles the Second, it is probable that he would not have

committed such a mistake as has been stated. If he had remembered the numerous synonymes always used in every English grant, whether it be the old charter of feoffment, the more modern deed of bargain and sale, or even this charter—in which may be found the words "lands, countries, territories, soils, grounds," &c., &c., all used to signify the same thing—he would not, it is supposed, have required that a different meaning should be given to each of these, nor have desired that a specific reason should be assigned for employing such mere formal tautologous terms in an old English grant. And if he had read the early history of Delaware with more care, he would not, assuredly, have cited the case of her northern boundary, the result of a compromise, made in 1680, between the several claim-
ants of that small space, either as a case "arising out of a
322 description in an ancient charter of the Crown," or as furnishing any evidence to prove even the probability that King James the First designed to give a complete circular boundary to Virginia, by his charter of 1609. But, having misunderstood the meaning of the word "circuit," and confounded it with that of "circle," he was so induced to adopt the fanciful notion of a circular boundary for Virginia; and then he was obliged to find, or to invent, some reason to prove at least the plausibility of such a theory. In doing this, he was compelled to disregard totally many of the most significant calls of the charter, and to plunge into many absurdities, as will be shown.

One of the most important requirements of this charter, as in all the other grants to which we have formerly referred, is, that the territory granted should extend "from sea to sea;" the meaning of which terms has been already shown. But the South sea would not be reached anywhere between the parallels mentioned, by any arc of a circle drawn with a radius of 200 miles, and having Cape Comfort as a centre.

To avoid this insurmountable objection, the author says, "that it was the belief at that time, in England, that the South sea was but some short distance from the Atlantic." This is true; but it is equally true that, at the date of this charter, it was *known* in England that this short distance exceeded 200 miles, as certainly as that London was not within 200 miles of the Mediterranean. In 1586, Sir Ralph Lane had ascended the Moratoc, now called the Roanoke, to a greater distance than 200 miles from the Atlantic. Captain Newport had afterwards ascended the James river above its falls; and, in 1608, Captain John Smith had ascended the Rappahan-
nock, Potomac, and Susquehannah, to the rapids of these
323 rivers respectively. None of these explorers had either seen or heard of the South sea, in either of these regions; although to discover it was the chief object of these several expeditions. Nay, the volume of fresh water pouring over these rapids, and the velocity of its current, assured these adventurers of the truth of the traditions they heard—that each of these great rivers descended from a distant elevated region; and that such streams could not have communicated with the salt sea anywhere. So that whatever may have been the

belief as to the distance between the two seas, it was certainly *known*, in 1609, that this distance must exceed 200 miles.

But if the learned author of this report was permitted to assume the distance from sea to sea to be what he pleases, he would still not be able to reconcile his fanciful circular boundary with the calls of this charter. If the assumed distance was more than two hundred miles, his boundary would never reach the South sea, although the charter requires the granted territory to extend to that sea. If this distance was less than two hundred miles, his fancied boundary would resemble anything else more than any arc of any circle, inasmuch as it would then become a quad-ilateral figure, having the two seas on the east and west, and two segments on the north and south, respectively. And if this distance was two hundred miles exactly, his imagined arc would touch the coast of the South sea in a single mathematical point only, when he would find it impossible to give effect to that grant in the charter which conveys to the grantees "all the islands lying within one hundred miles along the coast of *both* seas of the precinct aforesaid," unless he can conceive that a point and precinct are equivalent terms; so that, *quacunque via data*, no arc of any circle could satisfy the calls of this char-
324 ter, given in its description of the intended boundary.

The learned author of this report seems to be as indifferent to the impossibility of the truth of some of his geographical assertions, and to the mathematical absurdities they would involve, if they were true, as to the calls of the charter. Thus, he says, "the cape (Cape Comfort) was accordingly made the center of the coast line, which the new charter extended from one hundred to four hundred miles in length." Now, admitting the terms, "the centre of the coast line" to have some signification, (although a mathematician would be puzzled to determine what point could be properly called the centre of a straight line,) no one can conceive that such a point, even if it can be imagined to exist, could be found *out of the line* of which it is called the centre. And as Cape Comfort is not upon the seacoast, but is distant from it many miles, it is inconceivable that Cape Comfort could be made "the centre of the coast line," unless this author could transport Cape Comfort from the site it has occupied ever since Noah's flood, quite across Chesapeake bay and the peninsula beyond it, now called Northampton county.

Again, he says: "The starting point in the description now under consideration is Cape Comfort. From this the territory is to extend along the coast two hundred miles to the northward, and two hundred miles to the southward;" and to get this "coastline," as this author calls it, he takes "Cape Comfort as the centre of the arc of a circle, to be extended from the extremity of one of the before-mentioned lines (of two hundred miles) through the interior to the other, and to the course of the coast." But if Cape Comfort be not on the coast, (and it is not, certainly, nor has it ever been supposed to be,) the arc of the circle required to be thus described *must* be an
arc greater than a semi-circle; and the coast line, which must
325 be the chord of this arc, will not be a diameter. Every school boy can demonstrate, however, that the longest straight

line that can be drawn within the periphery of any circle is a diameter; *ergo,* as the diameter of this supposed arc is demanded to be four hundred miles in length, its chord *must be less* than four hundred miles; so that the author demonstrates, himself, the impossibility of the truth of his own postulate.

The committee deem it unnecessary to review that portion of the report in which the author shows so clearly, as he says, that the true bearing of a precinct bounded by the arc of a circle, which arc is greater than a semi-circle, and has a diameter running north and south, must be "west and northwest." *Davus sum, non Oedipus.* But every man of mere common sense must see, at a glance, that such a precinct will have all the bearings to be found on more than half the compass—that is to say, instead of being directed to two points only, it will be directed to more than sixteen points of the compass.

This newly invented theory of a circular boundary for Virginia has been thus extensively reviewed, because almost every argument urged upon this subject will apply with equal force to the next proposition brought forward in this report, and therefore need not be repeated.

Third. Under this head, the author, abandoning his circular boundary for Virginia, although but just asserted so positively, contends that the true boundary given to her by her charter of 1609, is in the form of a triangle. Like old Polonius, he has seen it "backed like a weasel," yet "it is very like a whale."

If this triangle did not reach the South sea, it would not satisfy that call of the charter which requires the granted territory to extend "from sea to sea." If it extended further from the coast of the South sea, the boundary of the territory granted would
326 not be triangular, but quad-ilateral. If its apex reached the South sea exactly, the grant of the islands in both seas, hereinbefore referred to, could not be satisfied; and any mathematician would tell this author that, as the long side, or hypothenuse, of his triangle is required by him to run to the northwest from the southeast, the bearing of the country, or ocean, beyond this precinct must be neither west nor northwest, but due *southwest* from the space and circuit enclosed by the three sides of this triangle; that is to say, his triangular diagram is constructed as directly in opposition to the requirements of this charter as it could well be made.

The obvious cause of this new error is the mistake of the *of the* author in supposing that the terms "west and northwest" are used in the charter to denote the direction of two mathematical lines, which are so to run in order to form two limits of the granted territory—the remaining limit of which territory will be the Atlantic seacoast. But, if he will read the charter with more attention, he may discover that it does not require any such lines; that, instead of lines, it is the whole "space and circuit" of land previously described in the charter, which it directs to be extended from the seacoast of the Atlantic, "up into the land, *throughout* from sea to sea;" and that the terms "west and northwest," refer to the bearing of the seacoast of one of these seas from the other. To satisfy this

requirement, two lines, each of them extending 200 miles from the point of Cape Comfort, and running north and south, must be drawn. Through the opposite extremities of these two meridional lines, two parallels must be drawn and extended to the Atlantic sea-coast. The precincts so formed must then be extended with that breadth further up into the land, throughout the whole continent, from the Atlantic to the Pacific ocean; which last was then
327 well known to exist, and to bear west and (of course) north-west from the first, between these two parallels, although the distance between the two seas in this quarter was not then known. These boundaries will make an irregular parallelogram, such as has been described. They will satisfy every call, and answer all and each of the known objects of this charter; they are in exact accordance with the opinions expressed by every writer upon this subject, whether English or American, until this singular report was given to the world; they are in perfect harmony with every act done in relation to this territory, during a period of much more than 150 years following the date of this charter; and they well illustrate the known policy of the English Government in reference to this matter. To this, it may be added that there is no other conceivable boundary which can possibly produce such results.

It has been shown that, according to the requirements of her second charter, granted May 23, 1609, Virginia was bounded on the north by the parallel of 40° north latitude; on the south by the parallel of 34° north latitude; on the east by the Atlantic ocean, between these two parallels; and on the west by the South sea, (now sometimes called the Pacific ocean,) between the same parallels.

This assertion, although in exact accordance with the opinion expressed by every author who has written upon the subject, has been questioned for the first time, in a report made to the House of Representatives, by one of its committees, on the 20th of August, 1842. It is proper, therefore, to examine the several arguments advanced and suggestions put forth in this report, in relation to this matter.

No one can read this report without being struck with the glaring inconsistencies it exhibits. The object of its author is to show
328 that the claim of Virginia to the limits above mentioned is not justified by the terms of the charter there stated. To attain this object he contends—

First. That the description of boundaries given in this charter is so indefinite and unintelligible, as to leave it quite uncertain what these boundaries were intended to be, and whether they included any space.

Secondly. That the boundary assigned to Virginia by this charter is, by that instrument, well defined to be the arc of a circle, the centre, radius, and chord of which are plainly prescribed; and

Thirdly. That the boundary of Virginia, called for by this charter is, not curvilinear, but rectilinear, and is a veritable rectangular triangle.

The two last of these propositions are, obviously, not less contradictory of the first than they are of each other; yet both of them are said to be in accordance with the calls of the same grant. Such

apparent inconsistencies would seem to prove that their author had very little confidence in the correctness of any of his propositions, the truth of each of which he so readily disproves by either or both of the others. In examining them, however, we will deal with him more fairly than he has done with his subject. We will not attempt to overturn one asserted error by another; but we will investigate each of these propositions as though it stood alone.

First. The author of this report commences his argument by quoting so much of the charter of 1609 as he thought useful; and having done so, he very gravely assumes that "it must be admitted that this description (of the boundary) is not very definite or very clearly intelligible." But, aware that such a modest *petitio principii* might not be granted, he immediately undertakes to prove it. This he does by selecting particular phrases from his quotation, as
329 evidences of a "description not very definite," or "very clearly intelligible."

The first of these selected passages, he finds in the phrase "from sea to sea." These words, he observes, "have been holden by Virginia to extend the territory from the Atlantic to the Pacific ocean, at that time called the South sea. But the South sea (and he might have added the Atlantic) is not named; and the inference that it (or either) was intended, if arrived at, can only be done from other words in the description." He remembers, however, to forget to state what these other words in the description are; and he has most studiously avoided to insert some of them in his quotation. Such disingenuousness may, perhaps, be pardoned in a lawyer, whose object is not truth, but victory. It does not well become a member of Congress, however, who is charged with the high duty of reporting to that body *all* the facts of a case, to the end that this body and the world may be enabled to form an impartial opinion of the merits. Under such circumstances, the *suppressio veri* is precisely equivalent to the *suggestio falsi*.

It would be very easy to prove the ambiguity, nay, the falsehood, of any instrument, however plain, precise, and true its language may be, if it was permitted to garble the language, by wresting a single phrase from its context, and to present this alone as the assertion of an independent and substantive proposition. No inquirer after truth has ever permitted himself to do so. In this instance, every one of the terms "from sea to sea" are quite intelligible to every understanding, and the supposed a-biguity consists only in determining the objects to which these plain words refer.

To determine this, no candid inquirer would have failed to remark that "to grant a further enlargement" of a known territory previously granted, was one of the declared objects of the
330 charter of 1609. That this previously granted territory was declared to be "in that part of America called Virginia," a region long known to be situated on the seacoast of the Atlantic ocean, confined by the former grant to a space on the "seacoast" between the 34th and 41st degrees of northerly latitude from the "equinoctial line;" and that "Cape or Point Comfort," mentioned in the enlarged grant, was a well-known spot in Virginia, situated

within the territory formerly granted, near to, and in full view of the Atlantic ocean. If these facts had been stated, as they ought to have been, he must have been skeptical indeed who could have doubted that the Atlantic ocean was *one* of the two seas referred to by the terms "from sea to sea;" and *one* of the two seas referred to in that part of the charter which grants "all the islands lying within one hundred miles along the coast of *both* seas of the precinct aforesaid." This being granted, even the geographical knowledge of this author, great as it may be, would have been severely taxed to point out any other than the South sea, or Pacific ocean, which can be found, or was ever imagined to exist, between the parallels of 34° and 40° of north latitude, if you proceed "from the (Atlantic) seacoast of the precinct aforesaid, *up into the land*, throughout from sea to sea," no matter what course you may pursue.

But an impartial inquirer after truth would not have stopped even here. He would have remarked, also, that one of the great objects of the London Company, from its very origin, was the discovery of the South sea, as the certain and infallible way to immense riches; that by the instructions given by this company to their agents in Virginia, these agents were specially required and advised how they should proceed in prosecuting this discovery; and that it was the general belief in England, at that day, that the South sea, or Pacific ocean, was but a short distance from the Atlantic,
opposite to the seacoast of the latter, within the precinct
331 assigned to Virginia. Combining all these circumstances, it is confidently believed that not one intelligent mind can be found in the whole world, except the minds of those who prepared or approved this report, which can doubt that these intelligible words "from sea to sea" refer to, and were intended to denote the Atlantic and Pacific oceans; and that they cannot be so tortured as to be made to apply to any other than these two seas, if any regard is had to their context and the date at which they were used.

But if any *scintilla* of doubt in regard to this matter can remain, it must be removed by a reference to the early grants of other British colonies in America, a part of some of which were actually carved out of Virginia.

I. The second, or northern colony of Virginia, having done nothing effectual towards establishing any permanent settlement in America, under the original charter of 1606, King James I, on the 3d day of November, 1620, made a new grant to the Duke of Lenox, and others, his associates, who were styled in the letters patent the "grand council of Plymouth for planting and governing New England in America." By this grant, the King granted to them the territory "between the fortieth and forty-eighth degrees of north latitude, extending throughout the main land, *from sea to* sea." (See Chalmers's Annals, p. 97, &c.)

II. The grand council of Plymouth, created by this charter on the 19th of March, 1627, made a grant to Sir Henry Roswell and others, "of all that part of New England which lies between three miles north of the Merrimack river, and three miles to the South of Charles rives, extending *from the Atlantic to the South sea*. (See

Neale's History of New England, vol. 1, p. 122.) This grant of the grand council of Plymouth was confirmed by King Charles
332 I, on the 4th of March, 1628, who, by his charter of that date, incorporated the grantees by the name of "the Governor and Company of Massachusetts Bay, in New England." (See Hutchinson's Collection of Original Papers, p. 120.)

III. In 1630, the grand council of Plymouth granted Connecticut to the Earl of Warwick, who transferred his grant to Lord Say and Seal, and others. This grant conveyed "all that part of New England which extends from Narragansett river, one hundred and twenty miles on a straight line, near the shore, towards the southwest, as the coast lies towards Virginia, and within that breadth, *from the Atlantic ocean to the South sea.*" This grant, too, was afterwards confirmed by King Charles I. (See Hutchinson, p. 44, &c; and Neale, vol. 1, p. 147.)

IV. In the fifth year of the reign of James I, that monarch granted to Sir Robert Heath, his Attorney General, "all that part of America from the river St. Matthew, in thirty degrees of north latitude, to the river Passo Mago, in thirty-six degrees, and extending in longitude *from the Atlantic to the South sea.*" (See Williamson's History of North Carolina, vol. 1, p. 84.) This grant was made in 1608, before the second charter granted to the London Company, in 1609. But the conditions of the grant to Heath not being fulfilled, King Charles II, on the 24th of March, 1662-3, made a new grant to the Earl of Clarendon and others, "of all that province territory, or tract of ground, called Carolina, situate, lying and being within our dominions of America, extending from the north end of the island called Luke island, which lieth in the southern Virginia seas, and within thirty-six degrees of north latitude; and to the west as far as the *South seas;* and so respectively as far as the river of Matthias, which bordereth upon the coast of Florida, and within thirty-one degrees of northern latitude; and so west, in a direct line, as far as the *South seas aforesaid.*"

333 For reasons which need not be stated here, it pleased this monarch afterwards to enlarge this grant. By a new charter, bearing date June 30, 1665, he granted to the same proprietaries "all that province, territory, or tract of land, situate, lying and being within our dominions of America aforesaid, extending north and eastward as far as the north end of Currituck river, or inlet, upon a straight westerly line, to Wyonack creek, which lies within or about the degree of thirty-six and thirty minutes northern latitude; and so west, in a direct line, as far as the *South seas;* and south and westward as far as the degree of twenty-nine, inclusive, of northern latitude; and so west, in a direct line, as far as the *South seas.*" (See Williamson's History, vol. 1, p. 230, &c.)

This grant, like that preceding it, cut off from Virginia all that portion of her former territory which was situated north of the parallel of thirty-four; and by the last grant above mentioned, the common boundary between the two colonies of Virginia and Carolina was declared to be the parallel of 36° 30′ north latitude, extending from the Atlantic ocean, here called "the southern Virginia seas,"

in a direct line, as far as the South seas. Here it may properly be remarked that this common boundary, so established at that time, has continued to be the common boundary dividing the territories of these two colonies from that day (June 30, 1665,) to this.

About the commencement of the last century, when the settlement of each of these colonies, along their common boundary, had come into contact with each other, a difference arose between them. This difference involved no question as to what this common boundary was; but simply where the admitted boundary-line would pass, if extended west from the Atlantic ocean, in a direct line to the
334 South seas, according to the calls of the Carolina grant. To determine this difference, Queen Anne, on the 1st of March, 1710, by an order in council of that date, directed that commissioners should be appointed by the Governor of Virginia, and by the lords proprietors of Carolina, respectively, for the purpose of running the dividing-line between the two provinces. Before any such commissioners were appointed by either of these parties, Governor Spotswood, on the part of Virginia, and Governor Edin, on the part of the lords proprietors of Carolina, agreed upon the terms according to which the existing controversy might be settled, if these terms were approved by the Crown of England, and the lords proprietors aforesaid. The terms proposed by the two Governors were submitted as suggested, and were approved by an order in council, made by King George I, on the 28th of May, 1727. In consequence of this, commissioners were appointed by the lords proprietors and by the King, (George II,) on the 14th of December, 1727, to run the dividing-line according to the terms approved by both parties. These commissioners performed the duty assigned them to the perfect satisfaction of their several constituents. During the year 1728 the dividing-line was run, according to the calls of the Carolina grant, from the seacoast to a point in the present county of Patrick, within sight of the Allegany mountains, a distance of two hundred and forty-one miles and two hundred and thirty poles—much more than a hundred miles beyond any settlement then made in either Carolina or Virginia. Here they were compelled to stop, by reason of the approach of winter and the failure of their provisions. (See the journal of Col. William Byrd, of Westover, one of these commissioners.)

To these examples more could be added, derived from the early grants of other British colonies in America; but those referred to above must suffice, as we think, to establish these propositions:
335 that so early as the reign of King James I., the crown of England claimed, by right of first discovery and occupancy, all that part of the continent of North America situated between the 29th and 48th degrees of north latitude, stretching throughout this continent from sea to sea—*i. e.* from the Atlantic to the Pacific ocean, then known as the South sea. That all this region was divided, at first, into three colonies—the first, or most southern of these colonies was extended along the seacoast of the Atlantic, between the degrees of 29 and 36 of north latitude; the middle colony was extended along the same seacoast, between the degrees of 36 and 40

north latitude; the last, or most northward colony, was extended along the same seacoast, between the degrees of 40 and 48 of north latitude; and each and all of these three colonies stretched throughout the continent, between the named parallels, respectively, from sea to sea—*i. e.* from the Atlantic to the Pacific ocean, in order to cover the whole space claimed by the Crown.

That such was the opinion in regard to the middle colony, called Virginia, the first in which any permanent settlement was made by the English, appears from what is stated in the earliest history of Virginia that exists; for Smith's work, although so called, scarcely merits this title. The first chapter of the second book of Beverley's history is dedicated to a description "of the bounds and coast of Virginia," as they were understood and believed to be when he wrote—that is to say, about the year 1722, after the territory of this colony had been abridged by the proprietary grants of Maryland and Carolina. "Virginia thus considered," says Beverley, "is bounded on the south by North Carolina; on the north by Patowmeck river,
which divides it from Maryland; on the east by the main
336 ocean, called Virginia seas; and on the west and northwest
by the Californian sea, whenever the settlements shall be extended so far, or now by the river Mississippi."—(See Beverley's History of Virginia, p. 102.)

Whether Robert Beverley, long the Secretary of State of Virginia, an officer appointed by the Crown of England, writing his history in 1722, in London, where he had the freest access to the public archives there, or the learned author of this report, written in 1842, merits the most confidence when they describe the ancient bounds of Virginia, is a question we willingly submit to the candid determination of an impartial world. *Non nostrum tantas componere lites.*

After what has been urged, it is not deemed necessary to spend much time in examining the next passage selected by the author of this report, to prove that the description of the boundaries of Virginia given in her charter of 1609, "is not very definite or very clearly intelligible." This passage he finds in the words "west and northwest."

Every lawyer knows that, when any grant calls for a natural object, to that object you must go, in running out the lines of the grant, notwithstanding it may not be found either in the direction or at the distance mentioned; and that no grant has ever been considered as either indefinite or unintelligible, because of the incongruity between the bearing given in the grant, and the true bearing of the natural object. Now, as the South sea is a well known natural object, called for by this charter, it is of very little consequence whether this natural object is found north or south, east or west, from the point of departure. Besides, the author of this report is certainly in error when he understands the terms "west and northwest" as being used, in this charter, to denote the direction of
337 a *line* to be extended between two points—one on the seacoast of the Atlantic, and the other to be found somewhere in that direction, on the seacoast of the South sea. If this charter is examined as it ought to be, it will be seen that it is not a mere *line*, but

"all that space and circuit of land lying from the seacoast of the precinct aforesaid," which is required to run "up into the land, throughout from sea to sea, west and northwest."

The geometrical truth and certainty of these words "west and northwest" could be demonstrated, when applied (as they are applied in this charter) to denote the relative bearing of two such long lines of seacoast on the Atlantic and Pacific oceans. But it is deemed sufficient to state upon this subject, that this apparent inconsistency results from that projection of the sphere, according to which all degrees of longitude must diminish, in their terrestrial length, as you proceed from the equator to either of the poles. The effect of this is, as every navigator knows well, that every meridian in the northern hemisphere, distant from any other given meridian in the same hemisphere, either towards the east or west, must necessarily bear from the given meridian, both east and northeast, west and northwest, as the case may be. That this was really the construction of her charter for which Virginia contended, is not matter of conjecture or of tradition. In the negotiation between Virginia and Pennsylvania for the adjustment of the boundary lines between the two States, which took place in 1779, the commissioners on the part of Pennsylvania suggested that the claim of Pennsylvania, which they insisted on, appeared to them the more reasonable, "as it was probable that it would not interfere with the boundaries of Virginia, as described in her charter of the 23d of May, 1609, when they should be determined according to the tenor of the
338 same." To which the commissioners of Virginia answered:

"What you suggest to strengthen the reasonableness of the claim of Pennsylvania, from the probability that it will not interfere with the boundaries of Virginia, as described in its charter of May 23, 1609, appears to us to have no weight. The northern boundary of Virginia, as described in that charter, beginning on the seacoast 200 miles northwest from Cape or Point Comfort, and running west and northwest, up into the land, throughout from sea to sea. *Such a northern boundary,* which is truly deduced from the quoted charter, will cross the Delaware above Newcastle, and, passing through the State of Pennsylvania with a *west-northwest* course, will emerge about the beginning of the 42d degree of north latitude; from all which, it is evident how much the claim of Pennsylvania interferes with the boundaries as described in the charter of the 23d of May, 1609."

This quotation is made to show that the northern boundary-line which Virginia claimed under her charter was a *west-northwest* line, from the northern extremity of her seacoast line; and it is remarkable that the commissioners of Pennsylvania never afterwards touched that topic. (See Henning's Statutes at Large, vol. 10, pages 519, 523, 527, and 537.)

Having thus made good our original proposition, and relieved it from every objection urged against it by this author, the committee decline urging anything further concerning the ancient boundaries of Virginia, given by the charter of May 23, 1609. The propriety of this course will not be questioned, since the report under consider-

ation itself announces to the world that "the committee do not deem the question of the construction of the charter in regard to
339 *boundaries* of any great importance, because they think the State of Virginia has no right to claim under it." What justification that committee may have to offer to their constituents and to the world, for wasting so much of the public time in the examination and discussion of a question which the committee itself declares not to be of any great importance, it is not for us to determine, differing with that committee in the opinion so expressed; yet it would ill become us to follow the example set, and to extend our investigation *further* than they have done, or to treat gravely any question after they have abandoned it by announcing it to be of no consequence.

The reason assigned by the committee for not deeming the question of the construction of the charter in regard to boundaries of any importance, is "because they think the State of Virginia has no right to *claim* under it." In support of this opinion, the committee urge many arguments, each of which we will now examine:

The first of these arguments rests upon the assertion of a fact (which fact no one ever has or can deny,) that all the charters granted to the London Company (of which there were three) were cancelled by a judgment of the Court of King's Bench, pronounced in a case of *quo warranto* depending in that court at its Trinity term, in the year 1624. From this admitted fact, the committee deduce their conclusion that the State of Virginia has no right to claim under such revoked charters.

Throughout this whole report, in reasoning upon the several subjects he presents, its author employs terms so general and comprehensive, that it is difficult to determine the precise object to which he intends to refer. The present is an apt example to illustrate this. What does this mean by "the State of Virginia?" If he means (what his words seem to denote) that self-created body politic and corporate, which, in 1776, proclaimed itself a free, sovereign,
340 and independent State, and then chose to take upon itself the name of "the Commonwealth of Virginia," he asserts but a necessary truism, requiring no argument to prove it. Such a sovereign body, self-created and self-sustained, could never stoop to claim anything *under* the mere concessions or grants of any human being. The foundation of her claims must not be sought for in parchment rolls of any kind. It exists and can be found nowhere but in the stout hearts and strong arms of her subjects, whose eyes ever beam with delight when they willingly and sincerely call upon their creator to witness their vow that they will be faithful and true to her. Strip her of this allegiance, by any means, and she becomes extinct—at once incapable alike of claiming or holding anything. Virginia, as a region, must have a local designation and a name, both of which, of necessity, must have been bestowed upon it by others; but, as a free and sovereign State, she exists only in the hearts of her own subjects. They created her, they have maintained her, and, with the blessing of God, they alone can preserve her.

Even if the charter incorporating the London Company had never

been annulled by the judgment of any court, it would be very absurd to suppose that Virginia, as a State, could claim anything *under* it. The very assertion of her sovereignty, when proclaimed by herself, would have revoked this charter. In virtue of that eminent domain which every sovereign must possess, all the lands within every country must be held by, of, or *under* its sovereign; and it would be ridiculous for this sovereign to claim anything *under* a subject, who at that instant must have claimed the same thing *under* him. It is in virtue of this sovereign right that all escheats and forfeitures are claimed; and it is in virtue of the same right that the payment of all taxes, and the performance of every other servitude necessary to the preservation of the sovereignty—such as mili-
341 tia service, &c., &c.,—may be, and are, lawfully required.

Therefore it is that the "Commonwealth of Virginia" never could have claimed (as it is certain that she never has claimed) any one element of her sovereignty under the concession or grant of any human being. She scorns to deduce it from the treaty of 1783, which every American (with the exception of one man) has ever considered, not as a grant, but as a recognition of pre-existing rights; and the era of her independence dates not from 1783, but from 1776; as the years of the colony did not begin with the 13th of May, the date of the first settlement, but with the 26th of October, 1607, when the discovery of Virginia was made.

But the author of this report may not mean "the State of Virginia;" by these words, he may intend, perhaps, to designate the people of Virginia, such as they were before they proclaimed themselves a sovereign State. If this be his meaning, he still errs in asserting that these colonists had no right to claim anything under the charters, after the revocation of these charters in 1624.

He who asserts such an opinion can know but little of the English constitution, as it was understood to be in 1624, or of what must have been the condition of all English colonists, under that constitution, but for their charters; nor can he understand much better the well-settled doctrines of the common law, if he asserts that the revocation of any charter can disturb the vested rights of third persons, lawfully acquired under such an instrument, while it was acknowledged to be valid and obligatory. Happily we have so seldom any occasion to refer to such doctrines now that many sciolists regard them as antiquated and obsolete. Hence, the committee must be excused for employing some time in vindicating our fore-
fathers, and in explaining why they considered a charter as
342 the sure foundation of all their rights, and as the palladium of their liberties; and why, until 1776, they always referred to their charters (although revoked by the grantor) as an ever-enduring guaranty to them and their posterity of their rights to life, liberty and property; and as sanctifying resistance whenever it should be necessary to resort to it, to defend these rights against lawless power and unauthorized oppression.

According to the theory of the English constitution, as it was understood in the reign of James the First, the King was a sovereign

as absolute as any monarch who ever sat upon a throne, whether in ancient or modern days. Such absolute authority was first acquired by conquest; and, being transmitted through many centuries, it devolved at last upon this King, who uniting in his person every formerly disputed claim to the English crown, his parasites found little difficulty in convincing him that the power was his *jure divino*.

But, absolute and sacred as was the authority of the King, according to the theory of the constitution, the exercise of such authority was checked and restrained by very many circumstances. These, in their origin, had no relation whatever to the actual government; but, co-existing with, and respected by it, during many generations, they had exerted a benignant and insensible influence upon it for so long a time, that, when combined, they served as a strong rampart around the privileges of the subjects, by which they were secured against the prerogatives of the Crown. Thus, the English Government, although in its theory as absolute as any upon earth, in its practice and effects was the freest then known to man.

Nor was this freedom less secure because these efficacious checks and potent restraints upon the practical exercise of absolute power were neither engrossed on parchment nor engraved on brass.
343 They were deeply written on the hearts of a brave people, endeared to their affections, not less by the fact that they had come down to them from a line so remote that the memory of man ran not to the contrary, than by the benign influence they had ever exerted. Casuistry could never diminish this influence by construction; and it readily accommodated itself to all circumstances when and as they arose. It walked with the monarch as a loyal and faithful liege, bearing a sharp sword, to be wielded by a strong arm, whenever it was unsheathed in defence of right; but acting as a magician's wand, and paralyzing his every faculty to do wrong.

But all these potent restraints upon the exercise of theoretic absolute power were peculiar to England. All the circumstances by which they were created and preserved were of English origin and of English growth. They existed not in the sister kingdom of Scotland, although then governed by the same King, nor were they known in the neighboring realm of Ireland. English customs were the guaranties of the rights of Englishmen, and the freedom they assured was English liberty. It existed at that day in no other region on earth than England; and would have perished if transplanted elsewhere, unless some means had been devised to preserve the exotic in a new climate and foreign soil.

In the reign of Queen Elizabeth, the scheme of colonizing parts of America was conceived by that sagacious monarch; but she and all her wise counsellors knew well that the execution of such a scheme would prove to be but a vain attempt, unless some plan could be adopted by means of which the privileges of Englishmen might be continued and secured to them when they removed to a remote and foreign land. Therefore, in the first grant made by Queen Elizabeth to Sir Humphrey Gilbert, bearing date June 11, 1578, she declared to him, "his heirs, and assigns, and to every other per-
344 son and persons, and to their and every of their heirs, that they, and every of them should be thereafter inhabiting in

the said lands, countries, and territories, should and might have and enjoy all privileges of free denizens, or persons native of England; any law, custom, or usage to the contrary notwithstanding." (See Stith's History of Virginia, page 5.) The same declaration was repeated, but in stronger terms, by King James the First, in the 15th clause of his first charter, dated April 10, 1606, and renewed in the 22d article of his second charter to the London Company, dated May 23, 1609.—(See Stith, Appendix, pages 6 and 20.) To which the committee may add, that the same covenant, in some form or other, exists in every charter for the purpose of colonization, granted by the Crown of England from that day to this.

Such a solemn covenant, so concluded between a sovereign and his subjects, after being fully executed on their parts, can never be revoked on his. Destroy the evidence of the promise made, if you please, and by any means you please; the destruction of the parchment can never disturb the rights acquired under it. Neither the judgment of a court, or of any earthly tribunal, can ever nul-ify that holy covenant, which, being executed by one party, thereby becomes enrigestered, as obligatory upon the other, in that sacred record that man never keeps or can falsify. Therefore, the committee can safely appeal to every statesman, moralist, or jurist, on earth, not being members of this committee, to say, whether they were not as free denizens of England, after the cancelling of these charters, as they had been before. And, in the same name, we protest against the new doctrine advanced, for the first time, by the author of this report—that our ancestors were the villein serfs of any despot master, or other than free denizens, natives of England, who, even after the revocation of the charters, might walk through the unexplored forests of Virginia, with the like security their English brethren enjoyed as they strolled over the vale of Runnymede, or through the thronged streets of London. The genius of English liberty evoked by this ever-enduring covenant, accompanied them whithersoever they might go in Virginia, as a guardian angel, to whose charge was specially committed the preservation of all their English privileges. It is false, then, to say that the colonists of Virginia could claim nothing under the charters, after the revocation of these charters in 1624. They still claimed, and were still entitled to, all the privileges of free denizens of England. This, their claim, they deduced from their charters for a period of more than 150 years after 1624, during all which period their claim was very often recognized, and never doubted by any one.

But the author of this report may say, perhaps, that the subject of his examination was territory; that all his remarks, although expressed in such general terms, should be referred to that subject only; and that all he meant to say was, that neither the colonists nor the State of Virginia could claim any territory under the charters, after the revocation of these charters in 1624.

Even so qualified and explained, the assertion is still incorrect. A very large portion of that space included within the circuit of not less than twelve of our present counties, is still claimed and [illegible] under patents granted by the London Company during th[illegible]

existence of that corporation. And any lawyer will tell this author that titles so derived were as valid and sacred after the charters were annulled, as they had been before; and that they continue as valid at this day, as any titles derived under grants of the Crown before the Revolution, although such grants may be under the great
346 seal of England, as the manner is, authenticated *per ipsum regem*.

Sixty years have now elapsed since Virginia ceded the territory northwest of the Ohio to the United States; sixty years since, her original right to the territory was, in effect, admitted by the United States, by the acknowledgment of her right to impose conditions on the grant, and by the acceptance of the grant subject to those conditions. Of those conditions the United States have constantly recognized the obligation, and their duty to fulfil them, as a matter of solemn contract between the State of Virginia and the United States.

The constitution of the United States recognized and ratified this contract, article 6, clause 1. The United States claim and hold under the grant of Virginia. It is yet more the interest of the grantees than of the grantor to make good the title which Virginia ceded. These considerations, alone, should suffice, at this late day, to preclude any branch of the Federal Government from questioning the validity of the original right of Virginia to the territory.

Suppose the original claim of Virginia to the territory had no foundation in truth and justice; suppose the United States had title to it, independently of, and paramount to, the cession of it by Virginia: of what importance is it—what possible good purpose can it now answer—to contest, or to maintain, any such proposition? It is a very unhappy, and, in the effect, (though it may not be in the motive,) a very mischievous disposition, which preserves or revives the memory of every ancient feud, inflames anew every cause of civil dissension which the wisdom of our fathers extinguished, and rakes among the ashes of the dead for every subject of party quarrel, of which, if history has preserved a shadowy sketch of the
347 grounds, time has destroyed every vestage of interest.

The apology for reviving this old controversy touching the original right of Virginia to the territory northwest of the Ohio, is found, it seems, in the vaunt made in the report adopted by the House of Delegates in 1834, of "the magnificent sacrifice" and "the generosity" of Virginia in making the cession of it to the United States—a vaunt, which good taste should have counselled the omission of; and had Mr. Hall been content with saying, in his report, that it was wholly immaterial to the subject then under consideration, (the propriety, namely, of making additional provision for the satisfaction of claims for military land bounties,) this committee would have agreed with him without the least reserve.

Allusion has been made in the report now under consideration to the probable intention of the English government, a few years before the Revolution, to erect new and separate colonies out of the western territory. But this policy was as likely to be applied to the western part of Georgia, South and North Carolina, Pennsylvania, and New York, as to that of Virginia.

But the design to form a new and separate colony west of the Alleganies, out of the territory of Virginia, as held or claimed under original charters, rested on the right claimed and exercised by the Crown, and to all practical purposes long acquiesced in, to dismember from the colonies, at its discretion, *any part of their acknowledged territory*, as had been done by the charters of Maryland, Pennsylvania, Carolina, New York, Maine, and New Hampshire. It certainly was not founded on any pretence that the new colony proposed to be formed west of the Alleganies would *not* take away part of the territory which Virginia was entitled to under her charter of May, 1609. That territory was already formed into a county called West Augusta, and a considerable population was settled in it, represented in the House of Burgesses, and, in all respects,
348 subject to the jurisdiction of Virginia. The very instruction* to the colonial government not to issue grants for lands on the western waters, was a virtual admission that the country was part of Virginia, of which, but for the prohibition, the colonial government might have continued to make grants. In fact, not a few formal grants (*patents*, as we call them) had been issued before the instruction was given; and much larger grants had been authorized *by order of the council*, according to an ancient and frequent practice of the colonial government. In June, 1749, a tract of 800,000 acres of land in our trans-Allegany country, was granted by order of council to the *Loyal Company*, to which in June, 1753, further time was allowed to complete its surveys. In October, 1751, 100,000 acres were, in like manner, granted to the *Greenbrier Company*, (part of which lay beyond the Alleganies,) and many surveys were made by both companies, but their progress was arrested by the breaking out of the war of 1756, and the irruption of the Indians, which immediately ensued. After the peace of 1763, these two companies united in a petition to the Governor and Council, praying a renewal of their grants, and further time to complete their surveys. But the Governor and Council resolved that, the King having instructed the colonial government not to make grants of lands on the western waters, they were thereby restrained from granting the prayer of the petitioners. This was in May, 1763; and yet as late as 1769, 200,000 acres of land, all lying on our western waters, were granted to General Washington, and other provincial officers and soldiers in the war of 1756, (known as Brad-
dock's war,) for military land bounties, promised by the
349 proclamation of Governor Dinwiddie of Virginia, in 1754; and of these lands surveys were made, and formal patents issued from the land office of Virginia; and this under a royal proclamation of 1763, relaxing so far the prohibition against the grant of lands lying on the western waters. (See Revised Code of 1819, vol. 2, app., 2, pp. 347, 349.) Let it be remarked that the royal proclamations, the instructions to the Governor and Council, and the exception in favor of the military land bounties, were made,

*This instruction was prior in date to the proclamation of October, 1763, mentioned in Mr. Hall's report, for it was certainly acted on by the colonial Governor and Council in May, 1763.

promulgated, and carried into execution, through *the instrumentality of the colonial government of Virginia.* And then, it is presumed, it can hardly be doubted that the Crown acknowledged, as the colony claimed, that the territory of Virginia extended beyond the Allegany mountains; and if Virginia was entitled to it, she could only have been so entitled by virtue of her charter of May, 1609; and she had the same title to all the rest of the territory within the limits described by the charter, to the western lands lying beyond the Ohio, as well as to the western lands on this side of that river. It may be remarked, moreover, that though the royal Governor and Council of Virginia professed respect to the royal instructions on the subject, the *people* paid not the least regard to them. They could not get their *patents*, but they persisted in making their settlements with great activity, and were nowise discouraged by the Colonial Government from doing so; and they always acknowledged the jurisdiction of Virginia, claimed her protection, submitted, and indeed claimed to be governed by her laws, and were represented in her legislature. For the defence and security of these very settlers, Virginia waged a war against the Indians, during Lord Dunmore's administration, some two or three years before the Revolution, which was terminated by the battle (memorable in our colonial annals) of Point Pleasant. So far, therefore, from this intention of
350 the Crown to erect separate colonies beyond the Alleganies, proving that territory not to be within the limits of Virginia, it *admits* the fact. But it has never been pretended that any charters were granted creating such colonial governments; therefore, the western limits of Virginia remained, up to the time of the deed of cession, unchanged, and in all respects the same as were indicated by the charter of 1609.

It is stated in the report, that "the committee did not deem the question of the construction of the charter of any great importance, because they thought the State of Virginia had no right to claim under it;" for that, "in the year, 1623 a controversy arose between the Crown and the London Company;" that, "in November of that year, a writ of *quo warranto* issued against the patent of the corporation, and at Trinity term of the Court of King's Bench, 1624, judgment was rendered, cancelling the patent, and ordering the charter to be resumed by the Crown;" that, "from that time *Virginia became a royal province, and continued such* until the period of the American Revolution; that, during the long period of 150 years from the dissolution of the charter of the London Company to the commencement of the American Revolution, not an act was done, either by the *Crown or Virginia*, recognizing its existence," (the existence of the charter). "It was known in history as a thing that had been, and had ceased to be."

It is apprehended, that if the details of that controversy, and the judgment pronounced in it, were examined, it would be found that the judgment only took away the monopoly, and the power of government over the colony, which were vested in the company by the charter, without affecting at all the territorial limits, or other rights of the colony itself; that the only change was from the proprietary

government of a trading company, to a royal government,
351 over the same dominion and colony.

It is sufficient to state that it was so understood at the time, and ever afterwards. Chalmers, in his Annals, page 63, observes that "history, both ancient and modern, evinces what unexperienced reason would infer—that no plantation ever took deep root, or advanced to maturity, under the influence of the interested edicts of a *commercial* combination. And the Assembly of Virginia, after it had tasted the results of a simple government, opposed with a firm spirit, during the subsequent reign, the attempts of those who endeavored to revive the patents and restore the corporation."

That the colonial legislature so understood it, is certain, from the fact that it took part with the Crown against the company; and, in 1642, upon an effort being made to restore the colony to the company, it made an earnest remonstrance and declaration against the measure, every word of which was applied to the *misgovernment* it imputed to the *company*, and the evils that would result to *the colony* if its monopoly and power of government should be restored. (1 Hen. Stat. at Large, pages 230, 236.) That it was so understood by the colonial executive, is proved by the answer of the Governor, Sir Wm. Berkeley, in 1671, to one of a series of statistical inquiries of the commissioner for foreign plantations: "What are the bounds and contents of the land within your government?" Answer. "As to the bounds of our land, it was once great—ten degrees of latitude; but now it has pleased his Majesty to confine us to half a degree;" (which "must allude," says Mr. Hening. "to the eastern boundary on the sea shore;") "knowingly I speak this. Pray God it may be for his Majesty's service, but I must fear the contrary;" (2 Ib., p. 514;) quoted in the report under review, page 54. Sir William
Berkeley, without doubt, referred to the straitening of our
352 ancient chartered limits, by the charters of Maryland and Carolina. Chief Justice Marshall, delivering the opinion of the Supreme Court in Johnson *vs.* McIntosh, says: "This charter (the charter of Virginia of May, 1609) was annulled *so far as respected the rights of the company*, by the judgment of the Court of King's Bench, on a writ of *quo warranto;* but the whole effect allowed to this judgment was to revest in the Crown the powers of government and the title to the lands within its limits;" (the limits described in the charter.) (8 Wheaton, 578.) Every word of the passage quoted seems to have been carefully weighed, and selected to express the legal consequences of the judgment upon the *quo warranto* against the company.

The charter was *annulled so far as respected the rights of the company*, not in respect to the rights of the colony. The *powers of government*, the same powers which the charter had vested in the company as proprietor, were revested in the Crown; the same title to the lands within its (the charter's) limits, which the charter had vested in the company, was *revested* in the Crown. The charter, so far from being annihilated, was recognized. The vacant lands in the colony were thenceforth crown lands in the King's dominion of Virginia, and the extent of that dominion was only to be ascer-

tained by the territorial limits described in the charter. Those lands could only be acquired by grants from the Crown, and they could only be granted by the Crown, according to a system of land laws enacted by the colonial legislature, and through the instrumentality of the colonial government. Of those colonial land laws we have a long series.

The argument drawn from the judgment against the London Company in 1624, if of avail to prove that Virginia was not thenceforth entitled to claim under the charter of May, 1609, would prove too much. It would prove that she had no charter at all,
353 for she never pretended to have any other; it would prove that Virginia, in her political capacity, had no title to any territory whatever; not only no title to the territory northwest of the Ohio, or west of the Alleganies, but no title to the island of Jamestown, or the city of Williamsburg, or Old Point Comfort.

In the latter end of the reign of Charles II., writs of *quo warranto* were issued against all the New England colonies, especially Massachusetts, which were earnestly prosecuted by James II., who proceeded in like manner against all the colonies, even those which were proprietary in their origin. As to Massachusetts, who was not to be deluded or frightened into a surrender of her charter, the Court of Chancery, in 1784, decreed "against the governor and company, that their letters patent and the enrolment thereof should be cancelled." Such being the fate of the strongest, the weaker colonies surrendered their charters. (See Chalmer's Annals, pages 414, 415, and 416; also, Mars. Wash. chap. 6.)

Massachusetts obtained a new charter from William and Mary, but differing as to the constitution of her government widely from the old one; it converted *her*, too, into a "royal province." (Ib. chap. 7.) The others obtained new charters likewise.

The judgment of the Court of King's Bench, pronounced in the case of *quo warranto*, could bind none but the parties in that suit and their privies. The parties were, the King *versus* the Corporation. The colonists were neither parties in, nor privies to this suit. And if the object of the prosecution, instead of being confined to what it was—a mere inquiry by what warrant the corporators continued to hold their charters of incorporation—had been to convict them of treason, no English lawyer dares to say that the titles of third persons, lawfully acquired from the traitors, before any
354 act of forf-iture committed by them, could be affected by the conviction of treason.

So far as this assertion refers to the commonwealth of Virginia, the committee have already answered it. This sovereign neither claims, nor ever has claimed, anything whatever *under* these charters. She refers to them, constantly, as she would do to any history, geographical treatise, or authentic map, as the best evidence the nature of the case permits, to prove what are the metes, bounds, and extent of the territory which she does claim. She refers to them, as she does to the grants made to others—of Maryland to Lord Baltimore, of Carolina to Lord Clarendon and others, and of Pennsylvania to William Penn—as proofs of what were and are the limits

of that region in America called Virginia. Under none of these grants does she claim anything; yet they too furnish, strong evidence to prove the nature and extent of that which she does claim. This she claims by virtue of her declaration of sovereignty, made in June, 1776, the truth of which declaration then made was afterwards, in 1783, recognized by the King of Great Britain, the former sovereign of this region.

By this declaration and recognition, the commonwealth of Virginia acquired something, as this report itself concedes; and the only question to be examined, is, what were the limits and extent of that something, which this report itself admits to have been so acquired by her. To satisfy such a question, she refers to the ancient charters, as well to her *quondam* colonists as to others.

When the author of the report announces that from the dissolution of the charter of the London Company in 1624, to the commencement of the Revolution, *not one act* had been done, by either the *Crown of Virginia*, recognising the existence of the charter of May, 1609, it is supposed that he was not aware of the controversy between Virginia and Lord Baltimore in 1634, when Virginia asserted her claim, under her charter, to the territory of Mary-
355 land; and the King in council did not directly decide against that claim, but left Virginia to her remedy at law. Here was an act of Virginia, certainly, if there was not also an act of the Crown, recognising the existence of the charter under which Virginia claimed. We admit the force of the precedent, and all the legal consequences that can fairly be deduced from it. In all countries governed by the common law, precedent is of force to make law—constitutional as well as municipal law; in all civilized countries, without exception, prescription seems title. The precedent of the charter of Maryland, in effect, established the right of the Crown to dismember from Virginia any part of her territory, at its discretion, without her consent; but in no wise affected the right of Virginia to such territory within her ancient limits, as had not been dismembered from her.

In Jefferson's Notes on Virginia, (answer to query XIII,) we find the following account of the *treaty of capitulation*, which provided for the security of the practical and civil rights of the colony, as well as its *territorial* rights, under its charter, and even for the restoration of the territory, which had been dismembered from it. "Articles agreed on and concluded at James city, in Virginia, for the surrendering and settling of that plantation, under the obedience and government of the commonwealth of England, by the Commissioner of the Council of State, by authority of the Parliament of England, and by the grand assembly of the Governor, Council, and Burgesses of that country", dated March 12, 1651.

The 4th article is in these words: "That Virginia shall have and enjoy *the ancient bounds and limits granted by the charter of the former kings*, and that we shall seek a new charter *from the Parliament* to that purpose, *against any that have entrenched upon the rights thereof.*" Here was an assertion by Virginia of her territorial rights under the charter of the former kings, including that

of May, 1609, in a solemn recognition thereof—not indeed
356 by the Crown, for there was then no king; but by the Parliament of England nominally; in fact, by the protector Cromwell, in whom were centred all the executive and legislative powers of the state, to all practical purposes. It appears, too, that Virginia claimed all the territory which had been granted by her charter, and redress against any that had *entrenched upon the rights thereof*—referring, doubtless, to the territory of Maryland, which had been granted to Lord Baltimore by Charles I, in 1633. It was stipulated that Virginia should seek a *new charter from the Parliament* to that purpose—meaning that she should bind herself formally to hold of the Parliament instead of the Crown; and the purpose of that stipulation was, that she thereby engaged indirectly to renounce her allegiance to the house of Stuart, which she could hardly have been brought to do directly, for the body of the people were cavaliers, and very loyal. No new charter was ever obtained from the Parliament; there was never, from that time, any real Parliament to ask one of, during the continuance of the protectorate. Cromwell was sovereign lord and master.

Mr. Jefferson says: "The colony supposed that, by this solemn convention entered into with arms in their hands, they had secured *the ancient limits of their country*; its free trade; its exemption from taxation but by their own assembly, and exclusion of military force from among them; yet, in every of these points was this convention violated by subsequent Kings and Parliaments, and other infractions of their constitution equally dangerous committed." Instead of 400 miles *on the seacoast*, they were reduced, in the space of thirty years, to about 100 miles," by the protection of Lord Baltimore, in the enjoyment of the territory of Maryland, which had been before dismembered from Virginia, and by the subsequent grants of Pennsylvania to Penn, and of Carolina to Lord Clarendon and others.

In this report, Mr. Hall quotes, as if *authoritative* on the subject,
the declaration of Maryland in the preamble to her act of
357 accession to the confederation of January, 1781, the representation of New Jersey made in Congress in June, 1778, the report of the committee of Congress made in November, 1781, and a speech of Mr. Wilson, of Pennsylvania. Mr. Wilson, (if the report of his speech is correct) said that, "if the investigation of right was to be considered, the United States ought rather to make cessions to individual states than receive cessions from them—the extent of the territory ceded by the treaty" (of peace) "being larger than all the states put together; that, when the claims of States came to be limited on principles of right, the Allegany mountains would appear to be the true boundary; this could be established without difficulty before any court or tribunal of the world." How Mr. Wilson got the Allegany mountains for the back line of all the States cannot be conjectured, unless he regarded that line as established by the King's proclamation of October, 1763, whereby the governors of the colonies were prohibited for the present, and until the further pleasure of the Crown should be known, from granting warrants of survey, or pass-

ing patents, for any lands beyond the sources of the rivers which fell into the Atlantic ocean, from the west or northwest, or upon any lands whatever, which, not having been ceded to or purchased by the Crown, were reserved to the Indians; and all the territories lying on the western waters were reserved under the sovereignty, protection, and dominion of the Crown, for the use of the Indians. Now, if Mr. W. thought that a royal prohibition—and that, in terms, a temporary prohibition—to the colonial governments, against granting vacant lands, or Indian lands, lying within the chartered limits of their respective colonies, took such lands out of the limits of the colonies, and ousted their jurisdiction over them, this seems to be a very strange conclusion from the premises; for we have the authority of the Supreme Court of the United States (in Johnson *vs.* McIntosh) that it was never understood that the existence of the Indian
358 title, unextinguished by purchase or conquest, to any territory within the chartered limits of any of the colonies, made those lands the less a part of the colonies in which they lay. It is surprising that a Pennsylvanian should have admitted that it was competent to the Crown, at its will and pleasure to take away any part of the lands within the limits of a *proprietary* colony, while the charter of the proprietor remained in force unimpaired; and as to the other colonies, the "royal provinces," the Crown might rightfully have interdicted the grant of any *Crown lands* lying in any part of them; or it might have granted the property and the right of disposing of any tract of *vacant country* within their limits—leaving them yet within the limits, jurisdiction, and government of the colony in which they lay. Thus the Crown *might have* interdicted the sale and grant of the palace grounds within the near city of Williamsburg; and it *did* grant the whole of the *northern neck* of Virginia to Lord Fairfax, with absolute power to dispose of it; and he, in fact, opened a land office to dispose of it, and did grant it out to individuals upon the terms he thought proper to prescribe; and yet those palace lands would have remained, and the northern neck was always understood to remain, part of Virginia, and subject to his jurisdiction. But the State of Pennsylvania did, it is supposed, entertain a different opinion from that advanced by her delegate in Congress. In examining the correspondence between the commissioners of Pennsylvania (of whom David Rittenhouse was one, whose character is well known) and the commissioners of Virginia, in the treaty for the adjustment of the boundaries between the two States in 1779, it is found that the commissioner of Pennsylvania, notwithstanding the royal proclamation of 1763, claimed, under the charter to Penn, a large tract of country west of the Alleganies, and, moreover, admitted most distinctly, that Virginia had a right still to claim under her charter of May, 1609; though they suggested that the boundaries described in that charter would not take away any part of the land lying within the charter of
359 Pennsylvania, they admitted that all the lands beyond the Alleganies, south and west of Pennsylvania, belonged to Virginia by force of her charter of May, 1609; and this was the very

basis of the negotiation and of the final arrangement between the two States (See 10 Hen. Stat. at Large, p. 521-536.)

France, by virtue of her discovery of the mouth and course of the Mississippi, up as far as the 33d degree of north latitude, claimed all that extensive district of country; before that, she claimed all the lands watered by the streams emptying into the lakes. These conflicting claims between the British colonies and France, ultimately were the cause of the war in 1756. France, in pursuance of her claim, had established a chain of posts from Canada to the Ohio, and along that river, and in the country watered by its tributaries; and the Crown of England had granted to the Ohio Company a tract of 600,000 acres of land in the disputed country. Collisions immediately took place between the French and the Ohio Company; and these were the immediate cause of the war upon this continent. Mr. Marshall says, in his life of Washington, ch. 11, page 377, that the tract of land granted to the Ohio Company "was actually granted as part of the territory of Virginia; and Dinwiddie, the Lieutenant Governor of Virginia, considering the French aggressions *as an invasion of the colony, the interests of which were committed to him,* laid the subject before the colonial assembly, and despatched General (then Major) Washington with a letter to the commandant of the French forces on the Ohio, requiring him to withdraw from the dominions of the British Crown. It was the colonial government of Virginia which first interposed—it was the colonial government of Virginia that commenced the war, with a corps of provincial troops under Major Washington, which was defeated at Little Meadows."—(*Ib.* ch. 11, page 367, 379.) The treaty of peace of 1763 extinguished the claim of France to all the territories south of the line of the lakes, and east of the Mississippi; and thus secured to the colony of Virginia the line of
360 the lakes for her *northwestern* boundary, (as she had always claimed,) and restricted her boundary on the *west* to the Mississippi.

Accordingly, Mr. Jefferson, in his Notes on Virginia, traces the boundaries of the State up to the charter of May, 1609, and the successive limitations upon those boundaries, to the charters of Maryland, Carolina, and Pennsylvania; then to the treaty of peace between Great Britain and France of 1763, which limited Virginia to the Mississippi on the west, and to the line of the lakes on the northwest; and, finally, to the cession of the territory northwest of the Ohio, by Virginia, to the United States, which restricted our territory on that side by the Ohio. Can any one suppose that Mr. Jefferson was ignorant of the proceedings and judgment on the *quo warranto* against the London Company in 1624? or that he did not understand the effect of that proceeding upon the territorial rights of the colony under its charter of May, 1609?

Mr. Hall, in his report, has spared us the trouble of showing Mr. Madison's opinions, viz: that *he* had *no* doubt of the original title of Virginia to the territory in question, at the same time that he thought that good policy dictated to her the propriety of ceding that

title to the United States. It may be well to explain, that when Mr. Madison said (in his letter to Mr. Randolph of the 10th of September, 1782, quoted in the report, page 61,) that "if the decision of the State, *on the claims of the companies* could be saved, he hoped her other conditions would be relaxed," he meant the decision of Virginia *against* the claims of the Vandalia, the Indiana, and some other *other* companies, which Virginia deemed contrary to her law, and declared null and void by her statute of May session, 1779, ch. 12 (2 Rev. Code—app. 2, ch. 4, p. 357;) and when those companies applied to Congress for its sanction of those claims, earnestly protested against the action of Congress on the subject, by her remonstrances of the 14th of December, 1799.—(10 Hen. Stat. at Large, p. 557-8.)

It is worthy of remark, that Mr. Madison was in corre-
361 spondence with Mr. Edmund Pendleton touching the claim of the United States for a cession of the territory from Virginia. Mr. P. belonged not to the executive or legislative department of Virginia, but to the judiciary; and Mr. M., no doubt, had recourse *to him* for information, as the person most likely to possess and to furnish it; and though Mr. P.'s views and opinions are not given us, we may be sure that Mr. M.'s are an exact exponent of his. To those who know Mr. P.'s character and history, his long and intimate acquaintance with all our colonial affairs, his diligence of research, his opportunity of acquiring full and accurate information, and his capacity, intellectual and moral, to deduce the truth from the information he had acquired, it will, perhaps, not be thought extravagant to say that he, of all men, was the person best informed on this and all like subjects, so far as Virginia was concerned.

Having clearly established that the views presented by Mr. Hall, in the report under review relative to the boundaries of Virginia, were unfounded and altogether erroneous; and moreover having shown that the importance attached to the revocation of the charter by the Crown of England was equally futile,—it is deemed proper, as the report in other respects gravely questions the right of Virginia to her western territory, to extend our inquiries somewhat farther, so as to embrace most of the prominent points tending to elucidate and establish her right to the territory, which by her deed of cession, she conveyed, under certain conditions, to this Government.

Virginia, in her constitution adopted June 29, 1776, plainly states her boundaries in the following words:

"The territories contained within the charters erecting the colonies of *Maryland, Pennsylvania, and North and South Carolina*, are hereby ceded, released, and forever confirmed, to the people of those colonies, respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except
362 the free navigation and use of the rivers *Potomac* and *Pokomoke*, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of *Virginia* shall, in all other respects, stand as fixed by the

charter of *King James I.*, in the year 1609; and by the public treaty of peace between the courts of *Great Britain* and *France*, in the year 1763, unless, by act of Legislature, one or more territories shall hereafter be laid off and governments established westward of the Allegany mountains; and no purchase of land shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly."

This, it will be seen, is in accordance with the limits and boundaries which we have successfully established to have been indicated by the charter of 1609, and recognized and acquiesced in by the country at large; restricted only by those limitations contained in the subsequent charters granted by the Crown to Lord Clarendon, Lord Baltimore, and William Penn. Virginia thus claimed all the territory within her chartered limits, and embraced in the treaty of 1763, between France and Great Britain, except the portions alluded to; which being conveyed by the British Crown to the parties just named, she therefore abandoned her right to all that portion of her domain included in those charters. Her claim to territory in 1776 was co-extensive with her original chartered limits, and the terms of the treaty of 1763, with the restrictions just stated; nor did she lay claim to lands within the chartered limits of any of her sister colonies.

In examining the colonial charters, and the different claims set up to the western territory by several of the old States, it is found that Connecticut claimed the territory north of the 41st degree of north latitude, extending the full breadth of her charter from the Atlantic to the Pacific ocean. But it must be borne in mind that there was a proviso in the charter *precluding* any encroach-
363 ment on the southern or Virginia colony, or upon lands *then* in the *possession* of any other Christian nation lying *west* of the Plymouth colony. It is believed that Connecticut rested her claim to a large portion of Pennsylvania, partly upon her charter, and, to some extent, on Indian purchases. The citizens of Connecticut insisted that their charter gave them the same breadth of land from the Atlantic to the Western ocean. This Pennsylvania controverted, on the grounds that at the time the charter was granted to Connecticut, the Dutch *held* and *possessed* the land along the Hudson river, and that *back* of them the French *claimed*. Besides that, at a later period, New York and Connecticut adjusted their boundaries because of the King's having exercised his prerogative of curtailing the old charters by subsequent grants to other persons.

Chalmers, in his Annals, Page 575, states, that "not only had New Netherlands been granted to the Duke of York, but *one-half* of Connecticut; which gave rise to one of those disputes that can only be settled by amicable treaty, because no acknowledged principles existed that were applicable to the pretensions of both. This colony, accordingly, sent commissioners to New York in December, 1664, to decide a dispute which so much involved the peace of both."

The charter of Connecticut was granted in 1661; that of New York, in 1664; that of Pennsylvania, in 1681. In 1684 the commissioners deputed by the King marked the boundaries between New

York and Connecticut, which were assented to by all the parties. On account of the adjustment of this western boundary of Connecticut, and because the grant to Penn was subsequent to the Connecticut charter, as well as for other reasons, it was urged that the latter had no valid claim to any portion of the northern part of Pennsylvania.

Massachusetts, also, under her charter, laid claim to an immense territory extending from sea to sea; and from that, as well as on account of purchases, she claimed the land now embraced in
364 New Hampshire and Maine. It is stated in volume 2, page 9, of Williamson's History of Maine, that "the charter of William and Mary, of October 7, 1691, embraced the whole territory of Maine in two great divisions: one, extending from Piscataqua to Kennebeck, was called the *Province of Maine;* the other, including all between Kennebeck and the St. Croix, was usually denominated Sagadahock." "After the treaty of Ryswick, (11th September, 1697) France, by treaty, and Massachusetts, by charter, both strenuously claimed the Sagadahock province, or country between Kennebeck and St. Croix." (Ibid. vol. 2, page 26.)

In vol. 8 of Wheaton, at pages 578 and 580, Johnson *vs.* McIntosh, it is stated that "a patent for Maine was granted to Georges;" and that afterwards Charles the Second was extremely anxious to acquire the property of Maine, but that the grantees sold it to Massachusetts."

Chalmers, in his Annals, page 379, observes, that "while Charles, before the complaints above mentioned were fully adjusted, was in treaty with Georges, in order to acquire his interest, the general court *slily* purchased his title. Mortified and offended beyond measure, that monarch, though willing to forget past errors and mistakes, required it to give up the purchase, and to return the writings upon being reimbursed the price."

But the claim of Massachusetts to territory beyond her present western boundary, it is fair to presume, was arrested by causes similar to those which restricted the State of Connecticut to her present limits.

Smith, in his History of New York, (pages 13 and 14,) observes, that "the King granted a patent, on the 12th of March, 1664, to his brother, the Duke of York and Albany, for *sundry* tracts of land in America; the *boundaries* of which, because they have given rise to important and animated debates, it may not be improper to transcribe, viz: all that part of the main land of New England, beginning at a certain place called or known by the name of St.
365 Croix, next adjoining New Scotland, in America, and from thence extending along the seacoast, unto a certain place called Pemaquie, or Pemequid, and so up the river thereof to the further west head of the same as it tendeth northward, and extending from thence to the river of Kimbequin, and so upwards by the shortest course, to the river Canada northward; and, also, all that island or islands commonly called by the several names of Meitowacks or Long Islands, situate and being towards the west of Cape Cod and the narrow Higansetts, abutting upon the main land between the

two rivers, then called or known by the several names of Connecticut and Hudson's rivers; together also with the said river, called Hudson's river, and all the land from the west side of Connecticut river to the east side of Delaware bay; and also all those several islands called or known by the names of Martin's Vineyard, or Nantucks, otherwise Nantucket, together," &c.

"Charles II granted to the Duke of York, in March, 1664, the region extending *from* the *western banks* of Connecticut to the *eastern shore* of the Delaware, together with Long Island—conferring the powers of government, civil and military; and considering neither the plantations of *Connecticut* nor of Holland to *exist*.—(Chalmers' Annals, page 573.)

"As the *validity* of the grant to the Duke of York, *while* Dutch *were* in quiet *possession* of the country, had been very *justly* questioned, he thought it prudent to obtain a *new* one in June, 1674; it confirmed the former.' —(*Ibid*, page 579.)

"When the Duke of York ascended the throne of his brother, this province, with its dependencies, devolved on the crown."—(*Ibid*, page 588.)

The State of New York, it appears, did not rest her claim to the western territory upon her charter, but mainly upon Indian purchases. The treaty of Stanwix (this was the name of a fort in the province of New York) in 1768, the result of a congress in which the colonies and the Six Nations were represented, perhaps in
366 conjunction with other pretensions of equal importance, constitutes, it is supposed, the strongest claim that State could urge to the western territory embraced within the charter limits of Virgina. But to place this view of the subject more authoritatively before the country, the committee respectfully invite attention to the following extracts from the 1st vol. Laws of United States and the Congressional Journal:

"The whole territory north of the river Ohio, and west of the State of Pennsylvania, extending northwardly to the northern boundary of the United States, and westwardly to the Mississippi, was claimed by Virginia; and that State was in possession of the French settlements of Vincennes and Illinois, which she had occupied and defended during the revolutionary war. The States of Massachusetts and Connecticut claimed all that part which was within the breadth of their respective charters; and the State of New York had also an indeterminate claim to the country."—(Laws United States, vol. 1, page 452.)

"The report of the committee, consisting of Messrs. Boudinot, Varnum, Jenifer, Smith and Livermore, on the cessions of New York, Connecticut and Virginia, &c., being the order of the day, &c." (See Congressional Journal of May 1, 1782, pages 21, 22 and 23.)

In that report it is stated, "That the agents for New York and Connecticut laid before the committee their several claims to lands, said to be contained within their several States, together with vouchers, &c.; but that the Virginia delegates declined any elucidation of their claims, &c., but delivered to the committee a written

statement." This written statement not being printed in the Journal, was found in the Department of State amongst the old papers there filed for safekeeping, and is as follows:

367 "No. 20.

Protest of the Virginia Delegates.

"That no misconstruction, unfavorable to the territorial rights of the State of Virginia, may be put on the refusal of its delegates to exhibit evidence in support of them before the committee to whom the territorial cessions of Virginia, New York and Connecticut were referred, according to the request of that committee, and the example of the delegates from New York and Connecticut, the considerations on which that refusal was grounded, and of which the committee were verbally apprized before any progress was made in the present inquiry, are now stated to them in writing:

1st. The acts of Congress, in compliance with which the above mentioned cessions were made, are founded on the supposed inexpediency of discussing the questions of right, and recommend to the several States having territorial claims in the western country a liberal surrender of a portion of those claims for the benefit of the United States, as the most advisable means of removing the embarrassments which such questions created. To make these acts of surrender, then, the basis of a discussion of territorial rights, is a direct contravention of the acts of Congress, and tends to diminish the weight and efficacy of future recommendations from them to their constituents.

"2d. If the present discussion has been opened upon an opinion that Congress can assume for the use of the United States any portion of territory claimed by an individual State, and supposed by them not to fall within its limits, we are now to learn the page of the confederation in which this power is delegated; if upon an opinion that Congress may exercise jurisdiction in territorial controversies between individual States, we refer the committee to the article of the confederation which vests an exclusive jurisdiction in such cases in another tribunal.

368 "3d. The cases now before the committee may eventually be brought before that constitutional tribunal. Ought not its decrees to be free from the bias and suspicion to which they may be exposed by the most indirect prejudication on the subject of right by so high an authority as Congress, or even a committee of Congress?

"4th. Although it should be confessed that the cognizance of territorial rights belongs to Congress, or a committee of Congress, (against which position we strenuously protest), yet the very form of conducting this business, if scanned by the ordinary rules of justice, is manifestly and essentially defective. Without any previous notice to the parties of an intention to discuss questions of right, and receive evidence relating to them,—nay, after expressly holding forth to them an intention to exclude all such questions,

they are now called upon to exhibit the evidence which supports their respective claims, by which means prepossessions in favor of one party may be erected by arguments and representations which another party is unprepared to controvert.

"5th. Nor can the conditions or reservations annexed to some of the cessions render a discussion of territorial rights necessary to determine the authority of Congress to accept them. For even if these reservations should interfere with the claims of any other State, what injury can arise? since the doors of the constitutional tribunal will not be barred to them; and it may at the same time be declared by Congress that such acceptance shall in no wise affect them.

"JOS. JONES.
"JAMES MADISON, JR.
"EDMUND RANDOLPH."

A true copy from the original filed in the Department of State.

W. S. DERRICK.

February 5, 1844.

369 The foregoing protest presents very conclusive reasons for *then* declining to discuss the right and title of Virginia to her territory. But it is a matter of regret that the able gentlemen who presented this paper did not afterwards place the Virginia title in its true light before the country, so as to obviate such imputations as the author, in the report now under review has seen fit for the first time to dignify, by formally urging them in a report addressed to the House of Representatives. From their known ability and intimate acquaintance with the subject, they could most effectually have vindicated the claim of Virginia, and established her right to all the western territory, which she contemplated ceding to the United States. At this late day, the subject is not only deprived of much of its interest, but it has ceased to be a question of practical importance. Notwithstanding this conviction, yet, deeming the assumptions of the report under review no less ill-timed and unfounded than prejudicial to the fame and character of the State of Virginia, it was deemed proper, though at this late day, to repel those extraordinary assumptions, and to place such views before the country in reply, as are sustained by facts and authorities, accompanied with such an exposition of them as our limited time would permit.

The report of the committee of the House of Representatives in 1782, after a brief statement, contains several resolutions, with the reasons for them appended thereto. From the purport of the resolutions, as well as from the character of the particular reasons adduced in their support, it is clear that Massachusetts, New York, Connecticut, &c., did not ground their claims on chartered rights or boundaries; for, if they had depended on them, they would also have been alluded to by the committee, either in their report, resolutions, or reasons. So it is fair to infer that they deemed the territory in question as lying *outside* of their chartered boundaries.

This was not only the fact, but the reasoning of the committee conveyed no other impression. It is well, too, to keep in
370 mind the fact, that the Virginia charter was anterior to either of the northern charters; and that each of the New England charters contained a clause, protecting the soil and limits of the south Virginia colony from aggression by those claiming under them.

In corroboration of what has just been urged, the attention of the House is invited to the two first reasons appended to the report just referred to, which are as follows:

"*First.* It appeared to your committee, from the vouchers laid before them, that all the lands ceded, or pretended to be ceded to the United States by the State of Virginia, are within the *claims* of the States of Massachusetts, Connecticut, and New York, being a part of the lands belonging to the Six Nations of Indians and their tributaries.

"*Second.* It appeared that a great part of the lands claimed by the State of Virginia, and requested to be guarantied to them by Congress, is also within the *claim* of the State of New York, being also a part of the country of the said Six Nations and their tributaries."

The fair inference to be drawn from the proceedings in Congress —so far, at least, as the printed journals present a history of them— is, that not one of the States objected to the claims of Virginia as encroaching upon *their* chartered rights or boundaries. But if those States relied upon *Indian* purchases, and thought, on that account, they had superior claims over Virginia to the western lands, yet a recurrence to history, it is supposed, will but poorly sustain them on that point. Indeed, from the hasty examination which we have given the question, our investigations induce the belief that, if Virginia rested her claim solely on such a precarious tenure as that, still she would, before an impartial tribunal, establish her right. In support of the conclusions we have arrived at on this point, we respectfully invite the attention of the House of Representatives to the following brief account of the treaties, deeds,
371 sales, &c., between the Six Nations of Indians and Virginia.

In the reign of George the Second, in the year 1744, a treaty was concluded at Lancaster, Penn., between the Six nations of Indians and Lieutenant Governor Thomas of that province, and the commissioners from Maryland, and Thomas Lee and William Beverly, commissioners from Virginia.

During the progress of negotiations, on the 28th of June, the Virginia commissioners observed, "that the first treaty between the great King, in behalf of the subjects in Virginia, and you, that we can find, was made at Albany, by Colonel Henry Coursey, seventy years since. This was a treaty of friendship. The next treaty was also at Albany, about fifty-eight years ago, with Lord Howard, Governor of Virginia. Then you declared yourselves *subjects of the great King, our father, and gave up all your lands for his protection.* At a subsequent treaty with Governor Spotswood at Albany, wherein (they said) you have not recited it as it is; for the *white* people,

your brethren of *Virginia,* are, in *no* article of that treaty, *prohibited to pass and settle to the westward of the great mountains.* It is the *Indians tributary to Virginia* that are restrained, as you and your *tributary Indians,* are from passing to the *eastward* of the same mountains."

On the 2d of July, the commissioners proposed that "we will give you, our brethren of the Six Nations, what goods they had with them, costing 200 pounds, Pennsylvania money, and 200 pounds in gold, upon condition that you immediately make a deed, recognising the King's right to all the lands that are, or shall be, by his Majesty's appointment, in the colony of Virginia." This resulted in the Six Nations executing a deed of their lands to the King.

In April, 1752, the Governor of Virginia appointed Joshua Fry, Lunsford Loamax, and James Patton, commissioners in behalf of the colony, to visit the Ohio, with instructions to obtain a
372 confirmation, from the Indians settled there, of the Lancaster deed. In obedience to these instructions, a treaty was held at Loggstown, on the Ohio, between the commissioners and the Six Nations. The Lancaster deed of 1744 was again, by a deed dated the 13th of June, 1752, fully recognized and sanctioned in the following words, viz: "We, sachems and chiefs of the said Six Nations, now met in council at Loggstown, do hereby signify our consent and confirmation of the said deed, in as full and ample a manner as if the same was here recited."—See Colony Titles, pages 29 to 68.

"Owing to his temper, as well as to his *situation,* Dongan (then Governor of New York) engaged, more than any of his predecessors, in the affairs of the tribes *bordering* on his province, which had so great an influence on its prosperity and peace. When the French settled in Canada, during the year 1603, they found the *Five Nations,* which, under the names of Mohawks, Oneydoes, Onondagas, Cawgugas, and Senekas, had been confederated from the most ancient times, engaged in implacable warfare with the Adirondacks, the most powerful tribe in that country." Subsequently to this war, and about 1680, "the Five Nations, in order to gratify their passion for war, to revenge insults offered during the time of their distress, turned their arms *southward,* and conquered the country *from* the Mississippi to the *borders* of the plantations as far as Carolina, destroying numerous nations, whose names no longer remain. And Virginia and Maryland were involved often in the calamities of their allies, whom they were unable to protect, except by treaties, which were generally infringed because they could not be enforced. In July, 1684, however, Lord Effingham and Dongan concluded a definitive peace with these powerful tribes for all the settlements; which was long inviolably kept, because they soon renewed the war with their ancient enemies the French."—See Chalmer's Annals, pages 585, 587.

373 "The Six Nations, occupying settlements in the western part of the colony, and having been frequently engaged in wars with the French, were considered as a most important barrier

to our frontier American settlements; it was, on that account, deemed expedient to enter into a treaty with them."

"In the year 1684, Lord Howard of Effingham, at that time Governor of Virginia, with two members of his council, visited Albany, to make a treaty with the Six Nations. On the 13th of July, in the presence of the Governor of New York and the magistrates of Albany, he addressed a speech to them, containing proposals for a future alliance and friendship, which were *formerly* accepted and ratified."

"The Six Nations stipulated to submit their lands to the Crown of England, 'to be *protected* and *defended* by his Majesty, his heirs and successors forever, to and for the use of them (the said Indians) their heirs and successors.'"

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The treaty of Utrecht, in 1763, contains the assent of the French nation to the negotiations previously entered into between the Six Nations and the English, in the following words, viz:

"The subjects of France, inhabiting Canada, and others, shall hereafter give no hinderance or molestation to the Five Nations or cantons of Indians, *subject to the dominion of Great Britain*, nor to the other natives of America, who are friends to the same."—See Colony Titles, pages 30 to 50.

It has already been stated that the treaty and purchase made by the Governor of New York with the Six Nations were made and entered into at Fort Stanwix, in the year 1768. This, then, was subsequent to the purchase by Virginia, as the foregoing treaties indicate, and after the close of the French war, which extended the limits of Virginia up to the lakes, and west to the Mississippi river.

But purchases of land from the Indians, according to an
374 understanding entered into as early as 1665, were precluded, unless by the sanction and consent of the Governor.

In the chapter treating on the united colonies, the author observes that "it instantly became a fundamental principle of colonial jurisprudence, that, in order to form a *valid* title to any portion of the general domain, it was necessary to show a grant either mediately or indirectly from the English monarchs; and this suggests the principal cause of the general solicitude to procure patents from the sovereigns of England at every period, because in them the *whole* was supposed to be vested."—Chalmer's Annals, p. 677.

"A great dispute between the inhabitants of Jamaica, or Long Island, which was adjusted by Colonel Nicholls, on the 2d of January, 1665, gave rise to a salutary institution, which has, in part, obtained ever since. The controversy respected Indian deeds, and thenceforth it was ordained that *no purchase from the* Indians, *without* the Governor's license, executed in his presence, *should be valid*."—Smith's History of New York, p. 35.

In addition to all this authority, the Legislature of Virginia, in 1662, passed an act which forbade purchases of land from the

Indians; and it does not appear that it was ever repealed.—See vol. 2 Hening's Statutes at Large, p. 139.

What has been adduced relative to Indian treaties, sales and deeds, it is believed is sufficient, should the conflicting claims of the several States be placed on this ground, to establish the right of Virginia to the territory which she ceded to this Government. But, as we have it in our power to produce the highest judicial authority known to this country, which places the claims of Virginia beyond cavil or dispute, we will close the discussion on this branch of our inquiries by citing the conclusive adjudications of the federal
375 court upon several of the points previously argued in this report. As those points are treated by the chief justice and one of the associate justices with great clearness and ability, it is deemed proper, on that account, as well as on account of the great magnitude of the question, to exact copiously from their opinions.

Judge Baldwin, in his Constitutional Views, page 80, remarks that "this guaranty was fulfilled by the treaty of peace, in which 'his Britannic Majesty acknowledges the said United States, to wit: New Hampshire, &c., to be free, sovereign, and independent States.' —1 Laws, 196. This recognition (relating back to the separate or unanimous declarations by the States, as this Court have held it,) has the same effect as if the States had then assumed the same position, by the previous authority of the King; the treaty not being a grant, but a recognition, and subsequent ratification of their pre-existing condition; and all acts which had declared and defined it previous to treaty, relating back to 1776."

"The people of North Carolina declared that all the territory within the bonds of the State was the right and property of the people, to be held by them *in full sovereignty*.—Laws of N. C., 275-6, Book Const. 234-5, December, 1776." (Baldwin's Constitutional Views, page 81.)

"Georgia insisted on that line (the 31st degree of north latitude) as the limit which she was entitled to, and which she had laid *claim* to, when she declared herself independent; or which the United States had asserted *in her behalf*, in the declaration of independence." (*Ibid*, page 75.)

It is remarked by Judge Baldwin, page 84, that "all charters and grants of power or property, are governed by the same rules of construction; all questions touching the boundaries of territory, or lines of jurisdiction, must be referred back to the original sover-
376 eign, in whom both were vested; and thence deduced, by a regular chain of title, to the contending parties. So this court has done, as to the controversies between the United States and foreign States."—2 Pet. 299, 314.

At page 87 he observes, that "By the Revolution, the duties, as well as the powers of government, *devolved* on the people of New Hampshire, (4 Wh. p. 651;) and, of course, to the people of each separate State." By the treaty of peace, "the powers of government and the *right of soil*, which had previously been in Great Britain, *passed definitely* to these States."—8 Wh. p. 584.

And it was held by the Supreme Court of the United States "that

the only territory which in fact belonged to the United States in 1787 (that which lay west of Pennsylvania and north of the Ohio), was acquired by the cession from Virginia," &c.—5 Wh. p. 375.

He remarks, at page 93, that "the original right of the Crown to grant the right of soil and the powers of government in and over the proprietary provinces, and the right of soil in the vacant lands in the royal and chartered colonies, was never drawn in question, after the Revolution, by any of the States on behalf of the confederacy; for whenever the Crown had made a grant, it was universally admitted that it was valid. When the proprietary governments were superseded by those of the States, the proprietaries were left in the quiet enjoyment of their rights of property, as in New Jersey to this day; or the States were suffered to resume their vacant lands, and to hold them without any claim by the other States for any share, as in Pennsylvania. (Vide 1 Dall. L. Pa. 822,) and in Delaware, (2 Laws D. 1074-'5.) But the States which had no vacant lands, denied the exclusive right of these States whose right of boundaries extended originally to the South sea, and after the treaty of peace of 1763, to the Mississippi; and set up a claim to a proportion of the unappropriated lands within the limits of those States, as a common acquisition by the confederation, for
377 the common benefit, in right of conquest, from Great Britain; but admitted the legislative power of the States over them, making no claim to jurisdiction. Those States, however, claimed the lands, on the grounds before stated, as their own, by the *devolution* of the Crown to them, the *guaranty* by the proposed articles of confederacy, and of the *treaty* with France.

"To put an end to all future controversy, it was by the ninth article of the former *provided* 'that no State should be deprived of territory for the benefit of the United States.' Connecting this proviso with the third article, and the second and eleventh articles of the treaty of alliance with France, it is clear that when the confederation became the act of all the States, Congress could, neither by treaty nor otherwise, do any valid act to effect the territorial rights of the States, without a direct violation of the expressed stipulations of both guaranties and this proviso. This was the principal reason why the final adoption of these articles was delayed from November, 1777, till March, 1781. Various attempts were made in Congress to strike out, or so modify this proviso, that the vacant lands should be deemed to be the property of all the States, as a common fund for defraying the expenses of the war; which having all failed, some of the States refused to adopt them. In March, 1780, Congress, finding that the controversy could be not otherwise terminated, recommended to the States to make liberal cessions of their western lands to the United States; to which Virginia and New York agreeing, the articles were signed, and cessions accordingly made by those and other States, which were deemed satisfactory.—Vide I Laws U. S. pp. 11, 12, 20, 22, 24, 467 to 482; 5 Wh. 376, 377."

"Now, as no conquests were made by the confederacy, and the possessions of the several States were fixed by the treaty of peace,

according to their original boundaries, the confederacy could acquire no territory as possessions or jurisdiction in matters of government; and this court have declared, in four solemn decisions, that
378 they did not." (4 Cr. 212; 6 Cr. 142; 12 Wh. 524; Ib. 524.)

"Taking it, therefore, as a political or judicial question, it has long since been put at rest, not only by the authority of the constitution, and all the departments of the Government, but in public opinion. It may then be assumed as an unquestioned proposition, that the United States can have no right of soil within any of the States of this Union, unless by a cession from the particular States, or a foreign State, who was the original, absolute proprietary thereof." (Baldwin's Constitutional Views, p. 95.)

(From Wheaton's Reports, Volume 8.)

JOHNSON AND GRAHAM'S LESSEE,
vs.
WILLIAM MCINTOSH.

(A title to lands under grants to private individuals, made by Indian tribes or nations northwest of the river Ohio, in 1773 and 1775, cannot be recognized in courts of the United States.)

"Mr. Chief Justice Marshall delivered the opinion of the court. The plaintiffs in this case claim the land, in their declaration mentioned, under two grants, purporting to be made, the first in 1773, and the last in 1775, by the chiefs of certain Indian tribes, constituting the Illinois and Piankeshaw nations; and the question is, whether this title can be recognized in the courts of the United States?

The facts, as stated in the case agreed, show the authority of the chiefs who executed this conveyance, so far as it could be given by their own people; and likewise show that the particular tribes for whom these chiefs acted were in rightful possession of the land they sold. The inquiry, therefore, is, in a great measure, confined to the power of Indians to give, and of private individuals to receive, a title which can be sustained in the courts of this country.

"The exclusion of all other Europeans necessarily gave to
379 the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves; and to the assertion of which, by others, all assented.

"Those relations which were to exist between the discoverer and the natives, were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.

"While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in the possession of the natives. These grants have been understood by all

to convey a title to the grantees, subject only to the Indian right of occupancy.

"The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles.

"The charter granted to Sir Humphrey Gilbert, in 1578, authorizes him to discover and to take possession of such remote, heathen and barbarous lands, as were not actually possessed by any Christian prince or people. This charter was afterwards renewed to Sir Walter Raleigh, in nearly the same terms.

"By the charter of 1606, under which the first permanent English settlement on this continent was made, James I granted to Sir Thomas Gates and others, whose territories in America lying on the seacoast between the 34th and 45th degrees of north latitude, and which either belonged to that monarch, or were not then possessed by any other Christian prince or people.

"The grantees were divided into two companies, at their own request. The first, or southern colony, was directed to settle between the 34th and 41st degrees of north latitude; and the second, or northern colony, between the 38th and 45th degrees.

380 "In 1609, after some expensive and not very successful attempts at settlement had been made, a new and more enlarged charter was given by the Crown to the first colony, in which the King granted to the 'treasurer and company of adventurers of the city of London for the first colony in Virginia,' in absolute property, the lands extending along the seacoast four hundred miles, and into the land, throughout from sea to sea. This charter, which is a part of the special verdict in this cause, was annulled, so far as respected the *rights* of the company, by the judgment of the Court of 'King's Bench, on a writ of *quo warranto;* but the whole effect allowed to this judgment was, to revest in the Crown the *powers* of government; and the *title* to the lands within its limits.

"At the solicitation of those that held under the grant to the second or northern colony, a new and more enlarged charter was granted to the Duke of Lenox and others, in 1620, who were denominated the Plymouth Company, conveying to them, in absolute property, all the lands between the 40th and 48th degrees of north latitude.

"Under this patent New England has been, in a great measure, settled. The company conveyed to Henry Rosewell and others, in 1627, that territory which is now Massachusetts; and in 1628, a charter of incorporation, comprehending the powers of government, was granted to the purchasers.

"Great part of New England was granted by this company, which at length divided their remaining lands among themselves, and in 1635, *surrendered* their charter to the Crown. A patent was granted to Gorges for Maine, which was allotted to him in the division of property.

"All the grants made by the Plymouth Company, so far as we can learn, have been respected. In pursuance of the same principle, the King, in 1664, granted to the Duke of York, the country of New

England, as far south as the Delaware bay. His Royal High-
381 ness transferred New Jersey to Lord Berkly and Sir George Carteret.

"In 1663, the Crown granted to Lord Clarendon and others the country lying between the 36th degree of north latitude and the river St. Mathes; and in 1666 the proprietors obtained from the Crown a new charter, granting to them that province in the King's dominions in North America which lies from 36 degrees 30 minutes north latitude, to the 29th degree, and from the Atlantic ocean to the South sea.

"Thus has our whole country been granted by the Crown while in the occupation of the Indians. These grants purport to convey the *soil*, as well as the *right of dominion*, to the grantees. In those governments which were denominated royal, where the right to the soil was not vested in individuals, but remained in the Crown, or was vested in the colonial government, the King claimed and exercised the right of granting lands, and of dismembering the government at his will. The grants made out of the two original colonies after the *resumption* of their charters by the Crown, are examples of this. The governments of New England, New York, New Jersey, Pennsylvania, Maryland, and a part of Carolina, were thus created. In all of them the soil, at the time the grants were made, was occupied by the Indians; yet almost every title within those governments is dependent on these grants. In some instances the soil was conveyed by the Crown unaccompanied by the powers of government, as in the case of the northern neck of Virginia. It has never been objected to this, or any other similar grant, that the title, as well as possession, was in the Indians when it was made, and that it passed nothing on that account.

"Thus all the nations of Europe who have acquired territory on this continent, have asserted in themselves, and have recognized in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians. Have the American States rejected or adopted this principle?

"By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government,
382 but to the 'proprietary and territorial rights of the United States,' whose boundaries were fixed in the second article. By this treaty, the *powers* of government, and the *right* to soil, which had *previously* been in Great Britain, *passed definitely to these States.* We had before taken possession of them, by declaring independence; but neither the *declaration of independence*, nor the treaty confirming it could *give us more* than that which we *before possessed*, or to which Great Britain was before entitled.

"It has never been doubted that either the United States or the several States had a clear title to all the lands within the boundary-lines described in the treaty, subject only to the Indian right of occupancy; and that the exclusive power to extinguish that right was vested in that Government which might constitutionally exercise it.

"Virginia, particularly, *within whose chartered limits the land in controversy lay*, passed an act, 1779, declaring her 'exclusive right

of pre-emption from the Indians, of all the lands within the limits of her own chartered territory, and that no person or persons whatsoever have, or ever had, a right to purchase any lands within the same, from any Indian nation, except only persons duly authorized to make such purchase—formerly, for the use and benefit of the colony; and lately, for the commonwealth. The act then proceeds to anul all deeds made by Indians to individuals, for the private use of the purchasers.

"Without ascribing to this act the power of annulling vested rights, or admitting it to countervail the testimony furnished by the marginal note opposite to the title of the law, forbidding purchases from the Indians, in the revisals of the Virginia statutes stating that law to be repealed, it may safely be considered as an unequivocal affirmance, on the part of Virginia, of the broad principle which had always been maintained—that the exclusive right to purchase from the Indians resided in the Government.

383 "In pursuance of the same idea, Virginia proceeded, at the same session, to open her land office for the sale of that country which now constitutes Kentucky,—a country, every acre of which was then claimed and possessed by Indians, who maintained their title with as much persevering courage as was ever manifested by any people.

"The States having within their *chartered limits* different portions of territory recovered by Indians, ceded that territory generally to the United States, on conditions expressed in their deeds of cession, which demonstrate the opinion that they ceded the soil as well as jurisdiction, and that, in doing so, they granted a productive fund to the Government of the Union. *The lands in controversy lay within the chartered limits of Virginia, and were ceded with the whole country northwest of the river Ohio.* This grant contained reservations and stipulations, *which could only be made by the owners of the soil*; and concluded with a stipulation that 'all the lands in the ceded territory, not reserved, should be considered as a common fund, for the use and benefit of such of the United States as have become, or shall become members of the confederation,' &c., 'according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever.'

"The ceded territory was occupied by numerous and warlike tribes of Indians; but the exclusive right of the United States to extinguish their title, and to grant the soil, has never, we believe, been doubted.

"The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian

384 title of occupancy, either by purchase or by conquest; and gave, also, a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise.

"The power now possessed by the Government of the United States

to grant lands, resided, while we were colonies, in the Crown, or its grantees. The validity of the titles given by either has never been questioned in our courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with and control it. An absolute title to lands cannot exist, at the same time, in different persons, or in different governments. An absolute, must be an exclusive title—or at least a title which excludes all others not compatible with it. All our institutions recognize the absolute title of the Crown, subject only to the Indian right of occupancy, and recognise the absolute title of the Crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.

"However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear—if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it—it becomes the law of the land, and cannot be questioned. So, too, with respect to the concomitant principle, that the Indian inhabitants are to be considered merely as occupants—to be protected, indeed, while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by courts of justice.

385 "This question is not entirely new in this court. The case of *Fletcher vs. Peck* grew out of a sale made by the State of Georgia of a large tract of country within the limits of that State, the grant of which was afterwards resumed. The action was brought by a sub-purchaser on the contract of sale; and one of the covenants in the deed was, that the State of Georgia, at the time of sale, was seized in fee of the premises. The real question presented by the issue was, whether the seizin in fee was in the State of Georgia, or in the United States. After stating that this controversy between the several States and the United States had been compromised, the court thought it necessary to notice the Indian title, which, although entitled to the respect of all courts until it should be legitimately extinguished, was declared not to be such as to be absolutely repugnant to a seizin in fee on the part of the State.

"This opinion conforms precisely to the principle which has been supposed to be recognised by all European governments, from the first settlement of America. The absolute ultimate title has been considered as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring. Such a right is no more incompatible with a seizin in fee, than a lease for years, and might as effectually bar an ejectment.

"Another view has been taken of this question, which deserves

to be considered. The title of the Crown, whatever it might be, could be acquired only by a *conveyance from the Crown*. If an individual might extinguish the Indian title for his own benefit—or, in other words, might purchase it—still he could acquire only that title. Admitting their power to change their laws or usages so far as to allow an individual to separate a portion of their lands from the common stock, and hold it in severalty, still it is a part of their territory, and is held under them, by a title dependent on their laws. The grant derived its efficacy from their will; and if they choose to
386 resume it, and make a different disposition of the land, the courts of the United States cannot interpose for the protection of the title. The person who purchases lands from the Indians, within their territory, incorporates himself with them, so far as respects the property purchased; holds their title, under their protection, and subject to their laws. If they annul the grant, we know of no tribunal which can revise and set aside the proceeding. We know of no principle which can distinguish this case from a grant made to a native Indian, authorizing him to hold a particular tract of land in severalty.

"The proclamation issued by the King of Great Britain in 1763, has been considered, and we think with reason, as constituting an additional objection to the title of the plaintiffs.

"By that proclamation, the Crown reserved under its own dominion and protection, for the use of the Indians, 'all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest,' and strictly forbade all British subjects from making any purchases or settlements whatever, or taking possession of the reserved lands.

"It has never been contended that the Indian title amounted to nothing. Their right of *possession* has never been questioned. The claim of Government extends to the *complete ultimate title*, charged with this *right* of possession, and to the *exclusive* power of acquiring that right."

After such an array of facts and authorities in favor of the claims of Virginia to *all* the territory which she either ceded to the United States, or reserved to herself, we may pronounce the points mooted by Mr. Hall, as "*coram non judice*," and therefore that the verdict of the committee on that account, and for other reasons, "*non constat*."

Mr. Hall, in the conclusion of his argument, in that portion of the report which we have reviewed, not content with advancing what we have already considered, proceeds emphatically to express
387 an opinion no less extraordinary than those we have just noticed. Notwithstanding our unwillingness to dwell on this subject, yet we would consider that we had imperfectly discharged our duty, were we to omit placing this assertion of his also in its proper light before the country. But, in undertaking to do that, we propose to be as concise as the nature of the allegation would admit, and we hope, after having removed his more elaborate and learned objections against satisfying the outstanding revolutionary land

bounty warrants, we shall be able to despatch his minor difficulties, equally as satisfactorily, and with more brevity.

In report No. 1063, page 62, we find the following: "On the contrary, it very clearly appears to the committee that the title of Virginia to the land ceded by her, as well as to a large portion of the lands retained and reserved by her, was of an extremely doubtful, not to say of a very flimsy character; and that the cession, when made, was as *much* for *her* own interest and benefit as for the interest and benefit of the *United States.*"

Mr. Hall thus concludes that learned portion of his speculations about the boundaries, chartered rights, and claims of Virginia to the western territory, which, at the instance of *this* Government, she ceded on certain conditions to the United States. He roundly asserts that "the cession, when made, was as *much* for *her* own interest and benefit, as for the interest and benefit of the *United States;*" and this inference he rests upon the assumption that "the title of Virginia to the land ceded by her, as well as to a large portion of the land retained and reserved by her, was of an extremely doubtful, not to say of a very flimsy character." But as we have, in the introductory part of this report, conclusively established the right and title of Virginia to *all* the lands contained in her ancient chartered limits, with the restrictions mentioned in her constitution, adopted the 29th of June, 1776, wherein her boundaries are clearly set forth; we, therefore, deem it amply sufficient to remark, in this place,
388 that, inasmuch as the *foundation* on which this inference of Mr. Hall rested was altogether illusory and fanciful, his conclusion must necessarily be impotent and worthless.

In connexion with this view of the subject, we propose cursorily to examine the amount of gross revenue which this Government has derived from the several portions of territory ceded by the different States to the Federal Government. The disposition manifested in the reports under review to *disparage*, both by every variety of argument and by insinuation, the just claims of Virginia, and thereby to impair the desire heretofore manifested by this Government to consider them favorably, impels us, in reply, to touch upon a topic which a sense of propriety, if no other reason could be found, should have dissuaded Mr. Hall from so elaborately arguing in his report No ignoble desire of drawing invidious comparisons, nor of disparaging either or any of the States of this Union, or in any way to question the course of policy which the Federal Government has deemed it proper to pursue in relation to this subject, has influenced our conduct on this occasion. On the contrary, we hold it in as bad taste to magnify the liberality of States as of individuals; and with equal justice it is maintained, that wantonly to disparage either, is equally repugnant to every consideration of propriety.

While the data presented for our consideration are not altogether definite as regards the precise amount derived from the sales of lands which *each* particular State may have ceded; yet in some instances they are so, and in others, when viewed in conjunction with what is *usually admitted* to have been the district *respectively* ceded by each State, we can arrive at an approximation sufficiently near the exact

point to enable the House of Representatives to draw such deductions as we think will heighten rather than diminish the disposition heretofore manifested to pay in full all the remaining land bounty claims. This laudable policy of satisfying these old revolutionary debts, we humbly conceive will be yet farther promoted by
389 contrasting the foregoing with the various returns or donations in land which Congress was required, or has seen fit, to accord to particular States since accepting the deeds of cession.

By reference to the various deeds of cession, it will be found that some of them contained special reservations in favor of the States granting the lands, while others did not. It is not material to our purpose to inquire into the reasons which induced some of the States to make those reservations, as it is sufficient simply to state the fact and the extent and character of those reservations.

Virginia, in her deed, required her expenses in subduing and defending the ceded territory to be reimbursed; that 150,000 acres of land should be allowed and granted to Clarke's regiment; that in case of there being a deficiency of good lands on the southeast side of the Ohio to satisfy the land bounties due the troops of her continental line, it should be made up of *good* lands on the northwest side of the Ohio, between the Scioto and Little Miami rivers.

For the last mentioned purpose, the troops of the continental line have located warrants in Ohio to the extent of	3,550,000	acres
And Congress has appropriated in land scrip, at different times, to satisfy the troops of the State and Continental lines, and the State navy	1,460,000	acres
	5,010,000	acres
Military lands reserved for Clarke's regiment	150,000	"
Total	5,160,000	acres

Connecticut made her deed of cession on September 14, 1786. She then ceded her claims to the territory lying between the 41st and 42d degrees of north latitude, and west of a line 120
390 miles west of the western boundary of Pennsylvania. She "reserved a tract of land on Lake Erie, bounded on the south by the 41st degree of north latitude, and extending westwardly 120 miles from the western boundary of the State of Pennsylvania." The cession of Massachusetts and New York included an insulated tract, commonly called "the triangle," lying on lake Erie, west of the State of New York, and north of that of Pennsylvania; and which has since been sold by the United States to Pennsylvania.

"North Carolina ceded to the United States all her vacant lands beyond the Allegany chain of mountains, within the breadth of her charter; that is to say, between 35° and 36° 30′ of north latitude, the last parallel being the southern boundary of the States of Virginia and Kentucky. That territory which now forms the State of Tennessee was, however, subject to a great variety of claims described in the act of cession; and Congress has, by the act of April

18, 1806, ceded to the last-mentioned State the claim of the United States to all the lands east of a line described in the act, leaving the lands west of that line still liable to satisfy such of the claims secured by the cession from North Carolina as cannot be located in the eastern division."

"South Carolina and Georgia were the only States which had any claim to the land lying south of the 35th degree of north latitude. By the cessions from those two States, the United States have acquired the title of both to the tract of country extending from the 31st to the 35th degree of latitude, and bounded on the west by the Mississippi, and on the east by the river Chatahooche, and by a line drawn from a place on that river, near the mouth of Uchee creek to Nickajack, on the river Tennessee." As a condition of the cession from Georgia, the Indian title to the lands within her present boundaries was to be extinguished at the expense of the United States, and she was also to receive 1,250,000 dollars out of the proceeds of the first sales of lands in the ceded territory. 1 vol. Laws U. S. pp. 452 and 453.

It is plainly seen from the foregoing, that the deeds of Virginia, North Carolina, Georgia and Connecticut, contained large and special reservations in favor of those States, and that the deeds of the remaining States did not. The history of the times seems
391 clearly to establish that it was the aim and policy of those States ceding their territory, that *all* of the *good* and *valid* claims of the *citizens* of either of those States to portions of the ceded territory *should* be properly and adequately guarded and protected.

Certainly it would have been a most singular transaction for those States, placed under legislative obligations to their citizens, not only to disregard such a state of facts, but to divest themselves of the ability to redeem these solemn promises whenever they should be demanded. Such a course would have been contrary to justice and common sense. Virginia, in ceding her territory, was not only mindful of this consideration, but thought she had made the most ample provision to guard against all contingencies.

Her *continental line* is especially *provided* for in the deed. Have *all* those claims been liquidated? We answer in the negative. Then should they be paid? We answer, that all *bona fide* claims against the Government should be paid.

Have all of her other debts incurred in prosecuting the war of the Revolution been paid? Again we answer in the negative; for there are yet *outstanding* land bounty claims due her State line, and navy. And those troops participated as fully, as freely, and as successfully in that great struggle for independence as those of the continental line. Their claims are deemed equally meritorious, and they are doubtless embraced within the scope and intention of the act of Congress of 1790, which purported to assume the debts of the Revolution. But we will for the present waive urging this point, and proceed with our comparative statements.

In the annexed tabular statement from Colonel Thomas H. Blake, Commissioner of the General Land Office of the United States, a full

and comprehensive exhibit is made—first, of the entire area
392 or number of acres ceded by the different States; secondly, of the gross proceeds of the sales of the public lands ceded to this government by each respective State; thirdly, the number of acres yet unsold; and, fourthly, the amount in money which it has cost this Government to extinguish the Indian titles to the various portions of territory ceded by each State. Also, in the explanatory notes, we find stated the several reservations or payments to particular States, as well as amounts paid to extinguish Indian titles in some of the States ceding their western territory. Before adverting more particularly to this table, we will simply recall to mind what has been established in the preceding part of this report, viz: that Virginia rightfully claimed, not only up to the 41st degree of north latitude, from the western boundary of Pennsylvania, but that, by the treaty made in 1763 by Great Britain with France, in consequence of Virginia having involved Great Britain in a war with that power, by vindicating her right of soil, which France had encroached upon, Virginia then had her northern limits extended out to the lakes. But as it is not our purpose to do more than to *disprove* the imputations of Mr. Hall, that "the cession, when made, was as *much* for *her own* interest and *benefit* as for the interest and benefit of the United States," we will, in our efforts to accomplish this purpose, not aim, therefore, to show the highest possible results which Virginia might lay claim to, but content ourselves with keeping within a limit which, it is believed, few (if any), will question as being legitimate, after examining what has been advanced in support of the right and title of Virginia to *all* the territory which she ceded to this Government. The charter of Connecticut, it has been shown, prohibited her from coming south of the 41st degree of north latitude, and Virginia claimed up to the 41st degree. So, therefore, as we have shown heretofore, that neither Connecticut nor any northern colony could,
under their charters, claim below the 41st degree of north
393 latitude, all the territory south of that parallel to the North Carolina line being included within the limits of Virginia, *clearly* belonged to her. On this account and for the reasons above stated, we will only extend our estimates and comparative statements, so far as Virginia at present is interested, to the ceded territory lying south of the 41st degree of north latitude; and with our base thus restricted, we think it can be conclusively shown that the *reverse* of what Mr. Hall declares is true. Adopting the 41st degree — north latitude as our northern limit, in making this comparative statement, it will be found, by an inspection of the map of the United States, that about four-fifths of the entire area of Ohio, Indiana, and Illinois, is situated south of that parallel. Then we have but to take four-fifths under the several heads in the annexed table referring to those States, and we obtain the data for our calculation, which, having been carefully made out, we also append, in order that we may the more satisfactorily present our views. In addition, we propose to present a statement of the various valuable considerations, reserved, or received, by several of the States, from this Government, since making their deeds of cession.

GENERAL LAND OFFICE, *April* 12, 1844.

SIR: In accordance with your request, I enclose herewith a statement showing the area of the territory ceded to the Federal Government by Virginia, New York, Massachusetts, Connecticut, North Carolina and Georgia; the gross amount of money received by this Government on account of sales from that territory; the number of acres remaining unsold; and the amount in money, goods, &c., which it has cost the Government to extinguish the Indian title to those lands.

I have the honor to be, very respectfully, your obedient servant,

THO. H. BLAKE,
Commissioner.

Hon. E. W. Hubard, House of Representatives.

(The concluding portion of report omitted.)

394 *Copied from the British Archives.*

S. P. O.
Colo. Vol. 6, No. 59 } Considerations, &c., 20 June, 1632.

Consideration Upon the Patent to the Lord Baltimore, Dated 20 June, 1632.

Matter of Lawe.

1. Because the matter of the peticion of the patentee mentioned to be the motive and the cause of the grant, is (viz) that the region thereby granted was then uninhabited and possessed of the barbarous heathen or savages.

Is not so, for in truth part of the said region had bin formerly inhabited by his majesties subjects which were sent over from the London colony of Virginia.

2. There is intended to be granted the libertyes of a county palantine, and there is no exception of writts of error, or of the last appeale to the king, as by law ought to be.

3. *Habend proutaliquis epus dundmensis infra et unquam autchac habuit vel habere potuit,* which I think is to generall and incertaine, because it doth not name any one certaine Bishop of Durham, to whom it may referr; and the county palantine of Durham was altered 27 Hen. 8 c. 24. That the justices must bee made in the king's name and by his authority.

4. By the patent of 10 April, 4 Jac. the king doeth grant and agree that Sir Thomas Gates, &c., and all such others as are and shall be joined to them of that colony shall begin their first plantation where they think fitt, between the 34 and 41 degrees of the said latitude, and have 50 miles from the place of their first plantation all alongst the sea-coasts, together with all the islands within an hundred mile; and an 100 mile to the land, and none permitted to inhabitt or plant on the back of the colony fol. 4 and 5.

395 5. By the Lord Baltimore's patent this election is taken away and part granted to him, viz: from Watking Point south, which is in the 38 degrees of latitude, to Lawares Bay north, which is in the 41 degree of latitude or thereabouts.

ACCOMACK C. H., VA., *Mar. 22d,* 1871.

DEAR SIR: The enclosed copies were made and forwarded to you by direction of Mr. Gillet.

Very respt., M. OLDHAM, JR., *D. C.*

To Gen'l Henry A. Wise.

RICHMOND, *May 17th,* 1871.

I have read and carefully compared the following pages with the copy of the Record of the clerk's office of the court of the county of Accomack, furnished by the clerk of said county, and can vouch for their being a correct transcript.

C. E. SNODGRASS.

396 *Scarburgh Report.*

To ye Hon'ble Gov'nr and Counsell of Virginia, Edm. Scarburgh humbly presenteth ye account of proceedings in his Majis. affaires at Annamessecks and Manoakin on ye Eastern Shoare of Virginia:

Accompanied w'th Coll. Stringer, foure of ye commission, and about fourty horsemen, whom I tooke w'th me for pomp and safety, and to repell yt contempt w'ch I was informed some Quakers and a foole in office had threatened to obtrude, wee came to Annamessecks on Sunday night, being ye 11th of October last past. On Monday morning, at ye house of Stephen Horssy, an officer of ye Lord Baltimore, I began to publish ye commands of ye assembly, and for yt ye officer could not read. I often read ye act unto him, who made me noe reply, but brought a pattent in stead of his commission, and tould us their was his authority, and yt hee was put in trust by ye lord leift. of Maryland, and he would not be false to his trust w'th more like that.

Hee was answered that there could be noe trust where there was no interest, that it was evident by ye Lord Baltimore's bounds he had noe lands to ye Southward of Watkins point, and yt that question was determined by a power beyond private men's controverting. Wherefore all that was required of him was, that he would please to subscribe his obedience to his majis. according to ye act of assembly, and peaceably enjoy his lands, goods, &ct., which his majis gov'nor would protect as his ma'ties subjects. But if he refused to conforme his obedience, I should arrest him to answer before his majis gov'nor for his contempt and rebellion. At this ye said officer, something startled, and said, put case, I doe underwrite my obedience and many more. The gov'nor of Maryland will come so soone as you are gone and hang me and them at o'r doors. It was an-

swered him, that hee thought to unworthely of ye lord leift., and yt it was a tiranny not imaginable to be done. The officer answered, such
things has bin done in Maryland, and therefore I dare not
397 subscribe. Then haveing spent much time, and consulting
w'th our military and civil officers, it was resolved as ye best expedient to arrest him, and take some of o'rselves for security for his appearance before ye hon'ble gov'nor and counsell, and sett ye broad arrow on ye doore. So thus proceeding wee went to ye house of Ambrose Dixon, a Quaker, where a boat and men, belonging to Groomes Shipp, and two running Quakers were, also George Johnson and Thomas Price, inhabitants and Quakers. Their publishing -he act of assembly w'th a becoming reverence, w'ch ye Quakers scoft and dispissed. George Johnson, filled w'th ye spirit of nonsense, talked till hee forgot w't hee said, and speaking much from ye purpose, I thought not my part to spend time as he did. But briefly demanding their obedience, and they all refusing, I proceeded to arrest them to appeare before ye hon'ble gov'nor and counsell to answer their contempt and rebellion, offering to take one ye other as securities for their appearance. But they refusing, I sett ye broad arrow on the doore, and so marched of to Henry Boston's, where publishing ye act hee desired consideration a day or two, and then hee would attend, so wee departed thence to Manoakin, where I send sumons for all ye housekeepers and freemen to appear, who coming in most willing and cheerfully they all subscribed except Mr. John Elzey and Capt. William Thorne, who being officers for ye Lord Baltimore desired respite of time, untill they could returne their commissions w'ch they engaged their words and reputation to performe so soone as possible. Their I held his ma'jis court of survey and had ye assistance of ye commissions therein.

Then all the people made entries of their lands and acknowledgements of conveyances, &c., of lands, they all desiring ye Hon. ye govo'r of Virginia's protection, as his ma'jis subject, which wee did asure them of, so farr as was in o'r powers. They also complained of a late invasion from ye Indians, and great danger of being cutt of, and said they sent to Maryland to ye lord left for aid, who after
about fourteen daies delay had a letter of advise to stand on
398 their owne guard, ffor they had more than enough to doe in
Maryland soe that these people said they were owned for profit, and deserted in distress.

That if a report of Col'l Scarburgh's coming w'th troops of horse had not prevented together with a sloop of his full of armed men seeking runaways had not happened therein y't juncture of time to ye terror of Indian, they had undoubtedly bin cutt of therefore desired course to be taken therein, w'ch, accordingly was done. They further desired y't in regarde of ye remotnes of officers, and ye intermixed neighborhood of Quakers, and ye confusion they did and might produce, that officers might be ther appointed, w'ch they were also assured to expect so soon as I could give ye Hon'ble gov'nor and councell account of the affairs; some of them also discoursed of ye Lord Lef't of Maryland's claime to Manokin and all ye other places Anancock, to which it was answered that whilst ye euonius proclama-

tion was uncontroled. That declares Anancock to be Maryland's Southern bounds it might be so received. But since occasion made ye gov'ment of Virginia not only reverse that proclamation. But also by this present act of Assembly ye certaine bounds of ye Lord Baltimore's pattent was declared, and that if ye Lord Lef't had ought to say, he was referred by ye act to persons and place.

Therefore, they need not trouble themselves therein ffor ye question apertained to higher powers and above private men's controverting at w'ch they were well satisfied and desired protection of their persons and estates from any pretenders under ye s'd lord, w'ch being assured them, they departed well satisfied. At that time, one Hollinsworth, marchant, of a Northern vessell, came and presented his request for liberty of trade, w'ch I doubted was some plott of ye Quakers, and yt it was their hopes to interrupt ye compliance of those at Manoakin by imagining I would demand customs and other charge upon w'ch hee should take occasion to depart, and then ye Quakers to upbraid ye obedient w'th this lost trade by reason
399 of impositions, and therefore urdge them to recede in tyme, but to defeat their designe, I presumed in their infant plantation to give ffreedom of trade w'thout impositions, w'ch when ye peple perceived, some said ye Quakers were lyers, ffor they had prophesied, otherwise I hope this will not be ill taken if the tyme, place and occasion be considered, it may be otherwise ordered hereafter when it shall be thought fitt. Then came Stephen Horssy and Henry Boston, who appeared according to promise, and ye said Horssy pretended hee would visit us next morning, and pass upon ye same resolves, as Mr. Elzey and Capt. Elcorn had done, that was to lay downe his commission and then subscribe his conformity. But hee never saw us more, and as wee are informed, carried away Boston w'th him, and advised others to rebellion, and to this day w'th ye Quakers bids defiance to ye gov'm't of his majis. country of Virginia, boasting their insolences and forgeries.

The number and quallification of this rout I shall recount. Stephen Horssy, ye ignorant yet insolent officer, a cooper by profession, who lived long in ye lower parts of Accomack, one elected a burgess by ye comon crowd, and thrown out by ye assembly, for a factious and tumultuous person, a man repugnant to all gov'mt of all sects, yet professedly none, constant in nothing but opposing church gov'm't, his children at great ages yet unchrist-ned. That left ye lower parts to head rebellion at Annamessecks, where hee now liveth, and stands arrested, but bids defiance untill by stricter order delt with.

George Johnson, ye proteus of heresy, who hath bin often wandering in this county, where hee is notorious for shiffting seismattical pranks, at length pitched at Annamessecks, where hee hath bin this yeare and made a plantation; a knowne drunkard, and reported by ye neighbors to be ye father of his negro wenches bastards, suspected to be made away privately and w'th stands gov'm't, for feare of justice, hee now professeth quaking and to instruct others, who is himself to learn good manners, calling ye obedient subjects villians,

rogues and forsworne persons for their subscribing, stands
400 arrested to appear before ye hon'ble gov'nor, and bids defiance untill stricted course be taken.

Thomas Price, a creeping Quaker, by trade a leather dresser, whose conscience would not serve to dwell amongst ye wicked, and therefore retired to Annamessecks, where he hears much and saith nothing els, but y't hee would not obey gov'nt, for w'ch he also stands arrested.

Ambrose Dixon, a caulker by profession, that lived long in ye lower parts, was often in question for his making profession, removed to Annamessecks, there to act what hee could not here be permitted, is a prater of nonsence, and much led by ye spirit of ignorance for w'ch he is followed. A receiver of many Quakers, his house is ye place of their resort, and a conveyor of o'r ingaged persons out of ye county, averse to gov'nt, for which hee stands arrested and ye broad arrow on his dore, but bids defiance until severer course reforme him.

Henry Boston, an unmanerly fellow, y't stands condemned on o'r records for slighting and condemning ye laws of ye county, a rebell to gover'nt, and disobedient to authority, for w'ch he received a late reward with a rattan and hath not subscribed, hid himself and so escaped arrest.

These are all, except two or three, loose fellows, y't follow ye Quakers for scrapps, whome a good whipp is fittest to reforme.

Some days since ye people of Manoakin and ye parts adjoining, made request to ye court for means of safety, in respect y't several strange speaches were spread by ye Quakers, and their adherents, whereupon the court of Accomack made ye following order:

At a court held in Accomack county, ye 10 day of November, by his Maj'es justices of the peace for ye s'd county, &c., and in ye yeare of our Lord God, 1663.

Present—Capt. Geo. Parker, Major Jno. Eilmy, Mr. Jno. West, Mr. Edw. Bowman, Mr. Devor. Browne, Mr. Hugh Yeo, Mr. Jno. Wisse.

401 Whereas his Maj'es good subjects inhabiting Manoakin and other remote parts of this country, having lately conformed their obedience by subscription to ye act of Assembly, w'ch ye Quakers and some other factious people for their owne ends have refused, and doe persist in that rebellion, and reporting as from the Lord Leift. of Maryland, many mutinous and factious speeches, tending to breach of peace, disturbances of ye people's quiet in those parts which wee rather believe to arise from their own inventions. Then so Hon'ble a person as ye Lord Leift. of Maryland, nevertheless, to prevent ye designs of those people Quakers whome his Majis hath declared to endeavour the subversion of gov'nt, and to secure those good subjects, who by their requests have sought this court for means of protection. The court have thereupon ordered that untill his Maji's gov'nt can be fully informed of this affair, and provide a fitter expedient, that Capt. Wm. Thorne, an officer under Coll. Scarburgh, Mr. Randall Revell, Mr. Wm. Bosman, and Mr. Jno. Rhodes, all of any of them be qualified w'th sufficient authority

to call together and comand all his Maj'is's good subjects at Manoakin and all other parts of this county so farr as Pokomoke river to come together and arme themselves only for defence against any person or p'sons yt shall invade them, to the disturbance of ye people or their estates, and breach of his Maj'is's peace, w'ch to conserne the court hath taken this case and course and y't it may appear absolute necessary, wee have annexed ye rumors that ye Quakers and factious fooles have spread to ye disturbance of ye peace and teror of ye less knowing, w'ch we are assured doth arise from ye Quakers, more than ye Lord Leift. of Maryland, or any other civill or ingenious person; and y't ye wicked plott and contrivance of ye said Quakers and factious fools may be prevented, have taken this course for ye safety of his Maji's good subject.

Some of ye reports are these:

That the Lord Leift. of Maryland will hang all those of his ma'jis subjects that have subscribed their obedience to his ma'jis govm't of Virginia.

402 That ye govn'r of Virginia, for medling, hath a peace of green wax sent for him.

That one Jolly intends to settle at Pocomoke river on some of ye people's lands of this county and to hold it *vi et armis*.

That Coll. Scarburgh, for executing ye gov'nor of Virginia and grand assembly's comands deserves to he hanged, and more stuff like this.

This is ye full account of ye proceedings to this day, as concerning ye performance of ye grand assembly's comands, and ye consequences thereof, it resteth w'th your honors to direct w't farther course is to be taken. I writt to ye Lord Leift. of Maryland and sent ye copy of ye act, to w'ch I added my readiness to attend w'th Mr. Cathel and Mr. Laurance if his hon'r did desire it, but have received no other answer but a capitulatory letter, w'ch I have sent herewith, presumeing ye lord leift. has personated his afaires w'th ye hon'ble govn'or at Jamestown: though I suppose, according to ye act of assembly, there ought to have bin a meeting on ye Eastern shore, w'ch ye Quakers say is contemned. Whatever my own person may bee, I presume ye officer I present is not so unworthy, nor w. persons of those joynee w'th me; nor when they come to try all shall they find y't affair negotiated with less repute than becomes such a concerne. Were only now expert either some particular orders or leave it to ye court of Accomac to proceed as occasion shall serve for ye peace and safety of his majis subjects. I suppose ye lawes of o'r country put in execution will order ye Quakers, whose interest will never permit their consciences to comply w'th yt govm't w'ch is inconsistent w'th their affairs. Therefore strictest course might be taken, and if comanded, though they are not free to come, they shall be brought before yo'r hon'rs by yo'r most humble servant.

EDM. SCARBURGH.

Capt. William Jones, justice of peace and quorum in his majis county of North'ton, Virginia, doth declare on oath, y't
403 about thirty-five or thirty-six years since hee did offten sale a trading w'th the Indians in ye bay of Chessepiack, and well

knew ye river Pokomoke, w'ch lyeth to ye Southward of a little point described in Capt. Smith's Mapp, w'thout a name, and is so far Southward as a man can see from ye place described in Capt. Smith's Mapp for Watkins point; and doth affirm y't ye said river of Pokomoke was then soe called, and noe such name as ye river Wighco, either at y't tyme or in ye memory of man before, was applyed to ye river of Pokomoke, and y't ever since ye said river, soe sciturted as aforesaid, hath bin and is called by ye name of Pocomoke river. And farthermore this deponent saith, y't in the time hee was a married man and a trader in y't bay of Chessepeak, John Nutwell was a boy and servant to Hugh Hayes, and was run away from his said master, and this deponent gave a hoe to ye Indians for ye said Nutwell, and brought him home again, well strapped w'th ye hallyards. Soe farr this deponent maketh oath.

WILL. JONES.

Sworne in open court ye 19th of July, 1664.

Test: ROB'T HUTCHINSON,
Cls. Cur. Co. Accom'k.

The severall persons subscribed doe make oath y't they have of long time past heard of and knowne ye river of Pokomoke, and yt ye said river hath bin so called tyme out of mind, both by ye report of ye Indians and knowledge of ye subscribers, and is to this day so called, being a river on ye Easterne shore of Chessepeack bay in Virginia, lying to ye southward of a small spirall point on ye southside of Aamessecks, and yt point is to ye southward of ye place described in Capt Smith's mapp for Watkins point, so farr as a man can see in a clear day, and yt said river of Pokomoke, and so situate as aforesaid is so called to this day.

EDM. SCARBURGH.
WILL JONES.
GEO. PARKER.
ANTO. HODGKINS.
JNO. RENNY.
JNO. WISE.
EDW. REVELL.
CHARLES SCARBURGH.

404 Sworne in open court ye 19th day of July, 1664.
Test:
ROBT. HUTCHINSON,
Cls. Cur. Co. Accom'k.

The foregoing are correct copies from the records of the clerk's office of the county of Accomack.
Test:
M. OLDHAM, *Dy.*
For WM. H. B. CUSTIS, *C. A. C.*

1871. Mar. 21st.
Clerk's fee for copies, &c., $2 89 c.

Conference Between Lord Baltimore and Wm. Penn.

State Papers, Colonial, Maryland, Vol. 43, p. 149-153.

(Dec'r 13th, 1682.)

A Conference held betweene the Right Hon'ble the Lord Baltimore, Proc. of Maryland, an William Pen, Esq'r, Proprietary of Pennsylvania, at the house of Col. Thomas Tailler, on the Ridge in Anne Arrundell county, Wednesday, the 13th of Dec'r, 1682, viz.

William Pen, Esq'r, declares in a very florid manner, his real and hearty inclinations to maintain and keepe a neighborly and friendly correspondence with his lapp and the people of this province, that it was not the ambition of gover'ment or dominion that flatter'd him into these parts of the world, but meerely to secure his owne that movee him to come into this country, which, since it was his fortune, he well enough liked, and shall studdy all wayes and meanes imaginable to approve himselfe a good neighbor, he then produces a letter from the king to the Lord Baltimore as a foundation or introduction to theire further discourse.

405 His lopp, haveing read the letter, answers, viz:

Ld. B.: His majesties letter I receive with all respect, and with that sense of my duty as becomes me, but by the purport of this letter, I conceive his Maj'tie hath received some misinformation, for the cleering of which I have here not only a coppy of mine, but a transcript of your pattent, by both which we must be govern'd, I haveing for my Northern bounds the fortieth degree of Northern latitude, which by your patent is your Southern bounds as Watkins point is mine.

(His lordship then reads the bounds in the patent.)

William Pen, Esq'r: By my petition to the King, I craved five degrees northward, the lords told me it was a great deale of land that my Lord Baltemore had, but two to which I replyed that the difference was *was* vastly great on my Lord Baltemore's side as for its position being richly accommodated with the bay on both sides, and severall faire navigable rivers and creeks, &c.; and my reason for so great a quantity was not out — a covetuous humor, but only that I might reach the lake of Cannada, for the conveniency of an inlett to my province, to which they gave theire opinion, that I should be answered to that by having a passage in this bay, but if the Lord Baltemore will stand to and abide by the literall sense of his pattent, then I think we must lay aside the king's letter untill we shall have first considered the grants and reasons of our pattents. If the Lord Baltemore will take thirty-seven-and-halfe degrees for thirty-eight, and soo runn on to forty, being half a degree difference, I think it is considerable, and had I covetted to have taken my commencement from Watkins point, as the Lord Baltimore is allowed, I had possibly gained more considerably, but confident that he wo'ld not endeavor to deprive me of anything that might conduce to my benefitt

without any great prejudice to himselfe, I was contented to begin where the Lord Baltimore ended, being firmly and stedfastly resolved to approve myselfe his good neighbor, and give him
406 the right hand of fellowshipp, and it shall be the Lord Baltemore's fault and not mine if there be not as faire and amicable correspondence between the two provinces as between any united provinces whatsoever, but if his majesties l're must be waived, we must proceed moderately to argue the grounds and reasons of our patents, and waite the king's leisure for a further interpretation of his grant to me.

Ld. B.: It was never my intentions, nor indeed in my thoughts to deprive Mr. Pen of anything that might conduce to his benefit soo as the same may not tend greatly to my prejudice, and what Mr. Pen meanes by a commencem't from Watkins point, I understand not but sure I am that had his pattent given him his commencem't anywhere to the southward of the fortieth degree of northern latitude he had deprived me of so much of my right which yet I believe Mr. Pen never desired nor covetted. But Mr. Pen you seem a little unkind in having proposed any deniall of mine to what you offered. And for any kindness you may reasonably expect from me I think it not soe well timed, let but the line be first layed out thereby to ascertaine to each of us his proper and just bounds, and then lett it be seen whether I shall deny Mr. Pen any neighborly kindness within my power.

W. P.: The king, it's true, did command the laying out the line betweene us, but if for a more ready way of accomodacon to us both he hath thought fitt to make other proposals, I cannot tell why they may not be taken into consideracon, but I shall concede and wiave that letter wholy making this further offer—the capes for several years have been reputed to lye in the latitude of thirty-seaven or between thirty-seaven degrees and five minutes or thereabouts, and hath been so generally taken and approved on by all persons for some considerable space of years, and by which calculation all shipps and vessells have proceeded on their voyages before such time as either interest or prejudice could sway them on the one side or the
407 other, for then if the Lord Baltemore please to take his commence't from the capes, which has been generally and of so long continuance reputed to lye in thirty-seaven degrees and five minutes, and from thence measure by line two degrees fifty-five minutes will next reach to the fortieth degree.

Ld. B.: My pattent gives me the fortieth degree of Northern latitude for my Northern bounds, and there is noo way soo certain to find that as by an observation to be taken by a sixtant of six or seaven foote radius, and such an instrum't you have belonging to Col. Lewis Morris, of New York, besides your commencem't by your pattent is given at the fortieth degree of Northern latitude.

W. P.: When I shall only say we will waive and wholly lay aside the King's ire at this time, if the Lord Baltimore will begin at thirty-seaven and halfe insted of thirty-eight, he will then indeed have more than was designed for him. I therefore offer as a medium between us the more easily to accommodate this matter, lett the Lord

Baltimore first begin at the ancient and generally reputed and known place of thirty-seven degrees and five minutes, and thence with a direct line to forty. What falls then within his bounds, much good may it do him. I am contented, and doubt not but he is so worthy and soe much a gentleman as not to endeavor to deprive me of anything shall appeare to be w'thin my grant. This I say I offer onely to lett the Baltimore know that, altho' I am sensible the king's letter is grounded upon strong presumption and strong circumstance, yet I am willing to waive that and accommodate the business between us a more equal way, as I conceive, viz: To comence at the comon generall and so long reputed known place, before either the Lord Baltimore or my selfe would challenge any interest in these parts of the world.

Ld. B.: It is other discourse that I expected to have heard from you at this time, and well I hoped that I should have bin soe farr favored by you as to have received some small advice from
408 you before you had soe farr proceeded upon that part of the countrey which has bin allways reputed and known to be justly claimed by me, but to wave that I desire to be informed by you whether you have purchased the duke's pretentions to Delaware.

W. P.: Upon terms of the moiety of halfe the revenues thereof to be reserved for himselfe. I hold it of his gift; but this leads to other discourse. I would willingly proceed first to the ascertaining the bounds between us.

Ld. B.: The certaine bounds betwixt us must be the fortieth degree of Northern latitude, as I have already shown you by my grant.

W. P.: And to find out that, I purpose, in my judgm't, the most equall way that can be, which is to begin at the capes, a place soe generally and soe long known and reputed to lye within the latitude of thirty-seaven and five minutes, and has not for the space of soe many years bin known to vary foure or five minutes by any observation yet taken, and soe from thence to measure two degrees, fifty-five minutes, which will just make the fortieth degree.

Ld. B.: My Southern bounds being Watkins point was so determined by commissioners from his majesty and others from my father. Now had they sett out Watkins point higher up the bay my father must have ben contented therewith, and the Northern bounds being the fortieth degree of Norther latitude beyond w'ch I am not to runn.

W. P.: Possibly the Lord Baltimore's Southern bounds might be layed out by commissioners, who may be could, or did not, see what they did. The uncertainty of an observation, I apprehend and conceive, is dangerous to confide in, for by the shaking of a hand, the error in the instrument, or the unskillfullness of ignorance of the observator, great inconveniences may occur to the prejudice of either side; but I doe offer as the most equal way between us to pitch upon. The soe long reputed and generally known and received place of thirty-seaven degrees, odd minutes, w'ch for the space of forty,
409 fifty or sixty years has bin concluded the latitude of the capes (speaking now of antiquity and before even the Lord Baltimore or myselfe were ever concerned in these parts), and from thence

to measure by line till we arrive to forty; which I conceive farr more safe than to trust to ignorance of an observator, the shaking of his hand, or a bad instrument.

Ld. B.: A more certaine observation of the fortieth degree may now be taken at the head of the bay. Then formerly there was of thirty-seaven and halfe where you say the capes lye; and I apprehent it to be more safe and sure for us both to have an observation taken in the proper place, with such an instrument as I have already spoke of; and surely, Mr. Pen you will as well confide in your friends as I shall on such as I shall appoint to joine with them. Now, for your owne satisfaction, the course you have proposed may be pursued, but that which I shall depende on, and be wholly determined by, is a due observation to be taken of the fortieth degree being the Northern bounds of my pattent.

W. P.: I do not object against the Lord Baltimore's bounds, but I say to find out w'ch, I think a case wherein a man ought to be as cautious as in the choice of a wife, well to consider before hand I propose the most equal way between us both to take our comencement from a certaine general reputed taken and received place of latitide of soo many years standing, described by all mapps, and by which all masters of shipps and vessells have been governed, and so from thence proceed distinctly to measure to forty, soe to remain to posterity, in order to the wavering any future disputes or differences, wch is all the favor I request.

Ld. B.: Since you owne the case to be soe tender as truely I doe, I think there will therefore be the greater reason to have our business determined the best and surest way, w'ch I have already offered; tho' for your satisfaction Mr. Pen, I shall not refuse the liberty to any person to doe that w'ch you propose, and make report to you that which I am not resolved to trust to and be concluded by is an observation to be taken with an instrument of six or seaven foote diameter for the sun will deceive neither of us.

W. P.: I acknowledge that as favor from the Lord Baltimore, but still I moove the most equall way, in my opinion, of ascertaining the bounds between us.

Ld. B.: Mr. Pen, you did, I remember, once propose to me, in England, that you had offers made you of that part of Delaware from his royal highness which I lay claime to, but you would not, as you then said, accept thereof, because you knew it was mine. The same I heire you have now possessed yourself of. I only desire to know upon what you claime.

W. P.: If the Lord Baltimore please, I desire we may first conclude our former discourse, and then I shall shew myselfe most willing and ready to give you all satisfaction I can on that point.

Ld. B.: I am willing and have always bin ready to conclude the business of the bounds according as my pattent directs me.

W. P.: I conceive that where there is a certaine degree allowed of and generally received for the space of soo many years, to comence there and so proceed by measure to the fortieth degree is the most equall way can be proposed, and am willing to be concluded

thereby, and hope the Lord Baltimore may not be opposite to it, and if that which is not the hundredth part of my Lord Baltimore's interest, may be ninety-nine parts of the hundred of mine; nay, possibly, *sine que non* that upon which the rest wholly depends. The Lord Baltimore, I request, will not place my eagerness therein to the account of my disrespect, but of my interest and honest endeavors to hold a faire and amicable correspondence with him; for that I cannot imagine that fifty or sixty years experience and generall concurrence in opinion could have any designe of favor or prejudice, either to the Lord Baltimore or myself.

Ld. B.: The latitude of the capes was taken by a sea quadrant, which by noe artist will be held soe exact and certaine as an instrument of six, eight or ten foot diameter; and with such an
411 instrument I desire the degree of forty taken.

W. P.: I doe not apprehend that a sea quadrant can have any prejudice for the Lord Baltimore than for William Penn.

Ld. B.: I say that it was more uncertain; the observation formerly taken at the capes by a sea quadrant, then an observation now to be taken of the fortieth degree of northern latitude with such a fisch land instrument as I have already made mention of can be.

W. P.: You say true, the taking of thirty-seven then may be as uncertain as the taking of forty now; but I say an uncertainty of soe long standing and so generally received and approved of by all persons, when neither instrument nor observation could be imagined to have any design of interest or prejudice for either of us, is safer to depend on than to run into new errors; and then if it fall within my Lord Baltimore's bounds, I hope he well be kind to me; and if within mine, I shall approve myselfe as kind to the Lord Baltimore as I intended.

Ld. D.: The way that propose, should I yield, would be but error upon error; therefore let our bounds be ascertained as I have offered; then possibly I may have an opportunity of shewing my kindness to Mr. Penn, and till that be done neither he nor I can approve ourselves as we both desire.

W. P.: I have, I think, proposed the most equitable way to that end, but suppose the capes to lye within the latitude of thirty-seven and this part of the country in thirty-six degrees and thirty minutes, which is halfe a degree difference. What will then follow but to set the sea and land together by the eares? By waiving disputes of that natures, I am contented to take our commencement from the long generally taken and reputed place of thirty-seven degrees and five minutes, and thence to runn to forty, which I apprehend the most faire and equall way, and am thereby willing to be concluded.

Ld. B.: Would it not seem very strange and preposterous
412 in England for me to proceed upon a bare suggestion or supposition of an observation of thirty-seven taken at the capes, and that by masters of ships with theire small quadrants, to find out the degree of forty.

W. P.: Lett the Lord Baltimore pitch upon one, and I another, to goe and take their observation at the capes, and from thence calculate where Watkins point lyes (which will not cost above five or

six days' expense) and from thence proceed to find out the degree of forty, by which, as I have soe often reiterated, I am willing to be concluded. As for the land in dispute, I value it not but barely for an inlet for the conveniency of my province.

Ld. B.: It is not to deprive Mr. Pen of an inlett to his province, but my interest, which makes me argue thus much; for should I consent to take that for my bounds which in truth is not, would be a meanes to destroy the very foundation of my patent, which you cannot blame me if I be not soe forward to doe.

W. P.: If the Lord Baltimore would vouchsafe to discourse with me a word or two in private, I should possibly open myselfe more fully and freely in this point, and franckly acquaint him what I would request of him, and whether the head of the bay fall within his or my bounds, we should, I doubt not, make all things comodious between us; for which reason I would crave a little private discourse with the Lord Baltemore.

Ld. B.: I hope I have not offered anything injurious to Mr. Pen, onely am desirous to preserve my own interest, to which end I desire that two able men may be made choice of to find out the degree of forty, whereby I am bounded by my patent, to the Northward. Here is Capt'n Connaway, a good, discreete, able man, lett him be one before he goes out.

W. P.: Capt'n Connaway, its true, is a knowing person, but before we goe further I am desirous to purge him of some aspersions have been cast on him that he should have advised me. I doe declare that I never had any advice from him in this particular [illegible]her indeed did I, to my knowledge, ever see him before such time as
413 I had my pattent granted me.

Ld. B.: What has been said of Capt'n Connaway, I know not, but whatever he hath said or don, I doe assure you never tooke any impression upon me, but that some misreports have been made the mapps and draughts which have ben sett forth sufficiently evince.

W. P.: Upon the view of the mapp of Maryland some persons taking the meetes as the same lay displayed, found that the author had either much abused the Lord Baltemore in the wrong calculation or else allowed him more land then indeed was intended for him, and accordingly some draughts have bin made.

Ld. B.: My pattent gives me, as you and all here present know, the fortieth degree of Northern latitude, and the same with such an instrument as I have mentioned will soone satisfie us where that is for thither my pattent guids me.

W. P.: Then thus in short I have here produced the king's letter in answer to which the Lord Baltemore sayeth that he will rather abide by his pattent which is under the great seale then to the bare contents of a letter.

Ld. B.: Mr. Pen were it your case would you not stick to a pattent so plaine as mine is?

W. P.: I doe not blame the Lord Baltemore, it may be I should doe the same as he does, I have consented to wave that, and for the more equal accommodation between us I have proposed that for the

ascertaining the bounds between us let us begin and take our comencem't from the capes soe antiently and generally knowne and reputed to lye within thirty-seven degrees and five minutes, and thence proceed till we come to forty which binds the Lord Baltimore to the Northward, and from whence I must begin to that the Lord Baltemore doth reply that true he is bounded by the fortieth degree to the Northward, and the most exact way to find that out, is, by an observation taken with a land instrument in answer to which I have returned that I conceive that to be a uncertain way for the reasons I have so often urged and say lett some persons be jointly
414 commissionated between us to take observation at the capes and report how much it varies from the antient generally reputed and recived opinion and then proceed to find the latitude of Watkins point, and from thence by an exact line measure out to the degree of forty to that end if the Lord Baltemore please to select four or five persons to be jointly impowered between us so unanimously to proceed without jarring which will consequently arise upon different parties.

Ld. B.: That may be don for your private satisfaction by any persons that may make theire report to you.

W. P.: I doe propose and request that we may accommodate the business betweene ourselves.

Ld. B.: I onely first premise that an observation be duely taken to answer the king's comands.

W. P.: I question not but if the Lord Baltemore vouchsafe to discourse the business in private with me we should fairely accommodate all matters.

The foregoing is to our certaine knowledge the sum and substance of what materially was argued and spoken by the Right Hon'ble Charles Lord Baltemore and Wm. Pen, the day and place aforesaid which hath been read to and approved by—

PHILIP CALVERT.
THOMAS TAILLER.
HENRY COURSEY.
HENRY DARNALL.
WM. DIGGES.
WILL STEVENS.

A true copy examined by me.

C. BALTEMORE.

Lett my cosen, Mr. John Darnall, the lawyer, and my kinsman, Mr. Mathew Meriton, have the perusall of this as also of the narrative sent herewith to you by

Your friend, C. BALTEMORE.

415 Endorsed.

MARYLAND, 13TH *Dec'r*, 1682.

A conference between Ld. Baltimore and Mr. Pen touching their boundaries.

Letter from Lord Baltimore.

No. 119.

PATUXENT, 11*th June*, 1683.

MY HONORED FRIEND:

I most thankfully acknowledge the favour of your last letter of the 9th of February, which came to my hands by Capt. Joseph Eaton, comander of the shipp Merchants Delight. It was with great satisfaction that I read your obligeing expressions therein, and noo little comfort to me also your assurance that the Lords of the committee were pleased with my proceedings and management of affaires of my provinces. I assure you, and (if you please) you may in my behalfe assure theire Lapps, that it shall be my endeavor, as it is my great ambition, to deserve the continuance of theire good opinion of me, and their kind approbation of my actions here, without which, and the grace and favor of my Sovereigne, I take noo content and satisfaction in anything of an estate in this place or any other part of the world. Haveing given this assurance as the truth of my part, I will now only add, that having lately had the long-desired second conference with my neighbor, Mr. William Penn, I send you the same in writeing, being the enclosed paper, which I have signed, and will justifie to be the sume and substance of what was argued, spoken and debated at New Castle on Delaware river, Tuesday, the 29th of May last, by the said Pen and my selfe. The favor that I will now beg of you is this, that if Mr. Penn should move for any further order and comands in reference to the bounds of
416 the two provinces, you will please, in my behalfe, to request I may have time to be heard in person, and (God willing) I will, April next, most assuredly, embarque for England, in order to make my just defence, and also that I may there be heard to make out my just claime to those parts on Delaware bay and river within the degree of forty Northerly latitude, which the said Penn pretends now to hold by writeings from his Royal Highness, the Duke of York. Good sr., move this in favor of

Your most affectionate friend,
And humble servant,

C. BALTEMORE.

Substance of Argument Between Lord Baltimore and William Penn.

(Copy.)

The sume and substance of what was argued and spoken by Charles Lord Baltemore and William Penn, Esq'r, at theire private conference, at New Castle, on Delaware river, Tuesday, the 29th of May, 1683.

Mr. Penn haveing by his letter of the 23d of April last, desired that I would lett him know where in some neere part of my province he might meete me, and that with what speed my affaires would per-

mit, I wrote him word that I would begin my voyage up the bay about the middle of May, which accordingly I did, and being arrived at Sasafras river Wednesday, the 23d of the said month, I dispatcht from thence Mr. John Darnall, one of my chief secretaries,
with a letter to Mr. Penn, signifieing my arriveall at that
417 part of my province, and Tuesday following being the 29th
of the same month, I mett Mr. Penn about eight miles short of New Castle, to which place that day I came in company with the said Penn. In the evening, the same day, I desired to know of Mr. Penn what proposals he had to make, signifieing that I was come thither to see what friendly issue might be put to the business of our bounds, to which he answered that tho' his majesties letter of the 29th of August (82) was not to be insisted on by him as to the two degreed mentioned therein, he con- there was yet an admeasurement to be insisted on still that seeming very strange to me both in regard that Mr. Penn had (at a conference afore) consented to waive that letter, as also in regard that it was not agreeable to my pattent, he took some paines (and not without some heat) to let me understand what he meant by another admeasurement, which he said must still be insisted on, being thus that as my Northern bounds was the fortieth degree of Northern latitude, he did not doubt but to have that ascertained by an admeasurement in this manner that there should be an observation first taken at Watkins point, and according to the latitude that that place by an observation should be found to lye in, that from thence there should be an admeasurement to the degree of forty, saying that out of every degree he did not doubt but to gaine six or seven miles, and by that meanes to gett water at the head of Chesapeake bay, and that this was the mistery which he was plaine to tell the Lord Baltemore, and did assure me that he would procure it from his Maj'tie, to which I answered, that if he could impose his dictates upon the king and council, it would be in vaine for me to hope to have justice don me. But I was not (as I told him) of opinion that he could impose in that kind, and since he discourst of having an observation taken at Watkins point (my South bounds) in order to such an admeasurement as he last proposed to himself, I did not see any reason why my North bounds might not also be ascertained by an observation, and then demanded
of him how he resolved to have the Northern bounds of his
418 province (being the 43rd degree of Northern latitude) settled
and fixed, and he answered me by an observation, to which I againe replyed, that he did not then approve of an admeasurement for his three degrees, tho' he thought it necessary in my case, and yet I said to him that there was more reason for an admeasurement as to his bounds (there being severall degrees mentioned in his grant) then in mine, where I had nothing given me by any number of degrees but only Watkins point for my South bounds, and the degree of forty for my North bounds, besides than an admeasurement in my case might be laid not to be rationally practicable, as will easily be made appeared (this having been argued with some earnestness). Mr. Penne (at last) told me that if I would hearken to and accept of a proposall which he had to make me, he did not doubt but all

matters would soone receive a friendly issue. I told him I was desirous of nothing more than that our differences might be amicable ended betwixt us. He then proposed this, that if I would let him have Susquehanna river for an inlett, and land enough on each side the said river sufficient for his occasions, and that I would let him know certainely under my hand what price or value I would set upon the same, he would then willingly join with me in taking an observation to finde the degree of forty Northerly latitude, and with such instruments as we had then proper for that purpose. To this I answered that I wondered should I be willing to dispose of that which he desired, how he could expect I was able to give him anything certain under my hand afore I knew certainly how far North up Susquehanna river the fortieth degree Northern latitude (my North bounds) would reach. He then desired to know what latitude Capt'n James Conaway and some other persons found Palmers Island, which is in Susquehanna river, to lye in, by an observation I had caused to be taken, the 28th of February last. For his satisfaction therein I produced to him the observation under theire hands, and the same read to him by which he said that the said island was sixteen miles to the southward of the degree forty; and then he told me that
419 by an observation he thought New Castle was about twelve miles from the said degree, and then proposes to me that if I would give him from under my—what he must give for as many miles as I should runn up the said river, saying if tenn miles, how much I would demand for tenn miles; and if sixteen miles, how much for 16 miles, and that after I had given him this certaine under my hand, he would then be willing to go with me to the heads of the river and joine with me in the taking observations, as I had all along insisted on adding that we should take but a few persons with us, and not have the noise and trouble of any troopes of horse. As this proposall was new, and a very strange way of proceeding, as I thought, I desired some time to consider of what he had offered, but I found he was not willing to give me any longer time than the next day, being the 30th of May, so that I took that little time to consider of his proposals, and made him some other offers, which he thought not good to yield to; after which we parted, and this is the sum and substance, nay (I may almost say) the very words that were spoken on both sides. But that it is the substance of what was (at that time) argued and spoken by Mr. Penn and me, I will make oath when required, and I doubt not but Mr. Penn will own as much when we meet at the Council Board.

C. BALTIMORE.

This 31st May, 1683.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

420 *Letter From the King to Lord Baltimore.*

No. 117.

State Papers, Colonial Entry Book, Vol. 52, p. 88-9, August 19th, 1682.

Right trusty and well beloved,—We greet you well. Whereas by our letters patent bearing date the 4th day of March, 1680, we have been graciously pleased, out of our royall bounty and the singular regard we have to the merits and services of Sir William Penn, deceased, to give and grant to our trusty and well-beloved subject, William Penn, Esq., son and heir to the said S'r William Penn, a certain tract of land in America, by the name of Pennsylvania. And inasmuch as the same, according to the bounds thereof, expressed in our said letters patents, borders on Maryland, we think it will very much conduce, as well to our service and the improvement and melioration of the said colonies, as to the benefit of the particular planters in both, that the boundaries in both of them be set forth and ascertained which cannot by any method be so certainly effected as by an admeasurement of the two degrees North from Watkins point, the express South bounds in your patent, and already settled by commissioners between Virginia and Maryland. And being willing to give the said William Penn all fitting encouragement in planting the said province, for preventing all disputes which may disturb an amicable and neghborly correspondence between you two and our subjects under yo'r respective commands, wee have thought fit hereby to recommend the same in a most particular manner to you, willing and requiring you that with all possible speed, upon the receipt hereof, you proceed to determine the Northern bounds of your provinces, as the same borders on Pensilvania, by an admeasurement of the two degrees granted in your patent, according to the usuall computation of sixty English miles to a degree, beginning from the South bounds of Maryland, according as the same are already settled by commiss'nrs as is above men-
421 tioned, that so our subjects transporting themselves into Pensilvania may receive no discouragement by loss of time to the prejudice of our service and their concerns. And so wee bid you heartily farewell.

Given at our court Windsor, the 19th day of August, 1682, in the four and thirtieth year of our reign.

By his mat's command,

CONWAY.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONUGH,
Record Agent.

July 14th, 1871.

S. P. O.

Colo., Vol. 6, No. 77.

Orders.

Att the Starr Chamber, the Third Day of July, 1633.

Present: Lord Keeper, Earle of Danby; Lord Privy Seale, Lord Viscount Wentworth; Lord High Chamberlain, Lord Viscount Faulkland; Earl of Dorsch, Lord Cottington; Earl of Bridgwater, Mr. Secretary Windebauck.

Whereas an humble petition of the planters of Virginia was presented to her Majestie, in which they remonstrat that some grants have lately been obtained of a great proportion of lands and territorys within the limits of the colony there being the places of their traffick, and so near to their habitations as will give a generall disheartening to the planters if they be divided into severall governments, and a barr to that trade which they have long exercised towards their supportation and relief under the confidence of
422 his majesties royall and gracious intentions towards them, as by the said petition more largely appeareth; forasmuch as his majesty was pleased on the 12th day of May last to referr to the board the consideration of this petition, that upon the advise and report of their lordships such orders might be taken as to his majesty's wisdom should seem best. It was thereupon ordered on the 4th of June last that the businesse should be heard the second Friday in this terme, which was the 28th of the last month, and that all parties interessed should then attend, which was accordingly performed, and their lordships having heard the cause, did then order that the Lord Baltemore being one of the partys, and the adventuress and planters of Virginia aforesaid, should meet together between that time and this day and accommodate their controversy in a friendly manner, if it might be, and likewise set downe in writing the propositions made by either party with their severall answers and reasons, to be presented to the board this day, which was likewise accordingly done. Now their lordships having heard and maturely considered the said propositions, answers and reasons, and whatsoever else was alleaged on either part, did think fit to leave the Lord Baltimore to his patent, and the other partys to the course of law according to their desire. But for the preventing of further questions and differences, their lordships did also think fit and order that things standing as they do, the planters on either side shall have free traffick and commerce with each other, and that neither part shall receive any fugitive persons belonging to the other, nor do any act which may draw a warr from the natives upon either of them, and, lastly, that they shall sincerely entertain all good correspondence and assist each other on all occasions in such manner as becometh fellow subjects and members of the same State.

423 *Letter From Lord Baltimore to the King.*

No. 13.

State Papers, Colonial, Vol. 5, No. 27.

AUGUST 19, 1629.

MOST GRACIOUS AND DREAD SOVERAIGNE:

Small benefits and favors can speake and give thanks, but such as are high, invalerable, cause astonishment and silence. I am obliged unto your ma'ty for the latter in such a measure. As reflecting upon my weakness and want of merit, I know not what to say. God Almighty knowes who is the searcher of hearts, how myne earnes to sacrifice myself for yo'r ma'tys service. Yf I do byt know how to employ my endeavors worthy of that greate goodness and benignity which your ma'ty is pleased to extend towards me upon all occasions, not only by reaching yo'r gracious and royall hand to my assistance in lending me a faire shipp (for w'ch upon my knees I render yo'r ma'ty most humble thankes), but by protecting me also against calumny and malice, w'ch hath already sought to make me seeme fowle in yo'r ma't's eyes. Whereas I am so much the more confident of God's blessing upon my labor in these plantations (notwithstanding the many grosses and disasters I have found hitherto) in that a prince so eminently virtuous hath vouchsafed to take it into the armes of his protection; and that those who go about to supplant and destroy me, are persons notoriously lewd and wicked. Such a one is that audacious man, who being banished the colony for his misdeedes, did the last wynter (as I understand) raise a false and slanderous report of me at Plymouth, w'ch comming from thence to yo'r ma'ty's nowledge, you were pleased to referre to some of my lords of the councell, by whose hon'ble hands (for avoyding the ill manners of drawing this letter to too much length) I
424 have presumed to returne my just and appologie to yo'r ma'ty.

But as those rubbs have been layd to stumble me there (w'ch discourage me not, because I am confident of yo'r ma'ty's singular judgment and justice); so I have mett with greave difficultyes and incumbrances here, w'ch in this place are no longer to be resisted, but enforce me presently to quitt my residence and to shift to some other warmer climate of this new world, where the wynter be shorter and lesse rigorous. For here yo'r ma'ty may please to understand that I have found by two deare bought experiences, w'ch other men for their private interests always concealed from me, that from the middlest of October to the middlest of May there is a sadd fare of wynter upon all this land; both sea and land so frozen for the greater part of the tyme, as they are not penetrable, no plant or vegetable thing appearing out of the earth, untill it be about the beginning of May, nor fish in the sea, besides the ayre so intolerable cold, as it is hardly to be endured. By means whereof, and of much salt meate, my house hath been an hospitall all this wynter

of 100 persons, 50 sick at a time, myselfe being one; and nyne or ten of them dyed. Hereupon I have had strong temptations to leave all proceedings in plantations, and being much decayed in strength, to retire myselfe to my former quiett; but my inclination carrying me naturally to these kynd of workes, and not knowing how better to employ the poore remaynder of my dayes, than, with other good subjects, to further, the best I may, the enlarging yo'r ma'ty's empire in this part of the world. I am determined to committ this place to fishermen that are able to encounter stormes and hard weather, and remove myselfe with some 40 persons to yo'r ma'ty's dominion of Virginia; where, if yo'r ma'ty will please to grant me a precinct of land w'th such privileges as the k. yo'r father, my gracious m'ty, was pleased to grant me here, I shall endeavor, to the utmost of my power, to deserve it and pray for yo'r ma'ty's long and happy raigne, as

Your ma'ty's most humble and faithful subject and servant,

GEO. BALTIMORE.

425 Foryland, 19 August, 1629.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

No. 14.

State Papers, Colonial, Vol. 5, No. 39.

Signed Charles R.

Right trustie and well beloved, we greete you well. Such is and ever hath been the estimation we make of the persons of our loving subjects who employ themselves in publick actions, that tend to the good and glorie of their countrie, and the advancem't of our service, as we cannot but take notice of them, though of the meanest condition; but much more of a person of yo'r qualitie, who have been so neare a servant to out late deare father of blessed memorie. And seeing your plantation in Newfoundland (as we understand by yo'r letters) hath not answered your expectation, which we are informed you take so much to heart (having therein spent a great part of yo'r meanes) as that you are now in pursute of new countries. We, out of our princely care of you, well weighing that men of yo'r condition and breeding are fitter for other employments than the framing of new plantations, which commonly have rugged and laborious beginnings, and require much greater meanes in managing them than usually the power of one private subject can reach unto, have thought fit hereby to advise you to desist from further prosecuting yo'r dessigns that way, and with your first conveniency to returne back to yo'r native countrie where you shall be sure to en-

joye both the libertie of a subject and such respect from us as
426 yo'r former services and late endeavors doe justly deserve.
Given at o'r pallace of Whitehall, this 22nd of Novemb'r, in the 5th yeare of our raigne.

Endorsed.

Copie of his matie's letter to the L'd Baltimore, as (two equall copies) were brought to the L'd Viscount Dorchester by the Earle *Marshall* and the l'd president of the North, and by my lord sealed with the signet, the day of the date 22 November, '29.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 1, 1871.

S. P. O. Colonial, No. 5, *endorsed* demands w'th reasons for 2 degr. of Mr. Alloarmy grat.

10TH FEB'RY, 1629.

1. 2 degr. are demanded, because an association is presently intended for a great sum of money to commence this year, w'th a great number of men to people ye same and to fortifie and furnishe themselves w'th all provisions, munitions and armes or commodities, yt shall subsist of yourselves for ye futture and yearly multiply in their numbers of men to be transported to ye first colonie. And ye principall undertakers being men of qualitie and good meanes, desire ye s'd 2 degrees upon conditions following:

2. The donation thereof be made unto A and B in proprietie, w'th charge to hold of ye lord predominant under his Ma'ty ye soveraigne, paying haff a mark of gold for a relief.

3. That ye s'd A and B shall have power to creat and establishe, or confirme, for ever, officers, ministers and agents of all qualities and conditions, touching as well ye church as ye military and politicall part of gover'm't, according to ye grall orders and
427 lawes of ye whole province; paying and causing to be payd to these officers, ministers and agents all their entertainm'ts and wages, what charge or expense in any kinde unto ye se, Sr. Robt. Heath.

4. That we s'd A and B shall cause to be payd by the fermers ord'rie of ye Lords rights and duties ye half of all ye s'd rights and duties of all kinds whatsoever, all well of all mins, mineralls and salts and of all fruits and issues and profits, arising out of ye labour and works of ye inhabitants of ye s'd 2 degrees. The other half of the premises being left and apperteyning unto ye s'd A and B to be received of ye said fermes, that is to say ye twentyth part of all mines, mineralls and salt, and ye fortieth part of all fruits, profits and issues arising out of ye earth with ye s'd 2 degrees.

Motives in Behalf of A and B.

That is impossible for A and B to raise other profits or favor out of ye s'd 2 degr. forasmuch as it is a will be bootles unto them, as also ye Lord paramount to have ye s'd lands lye untilled, &c.; and yt the people who shall labour and till ye s'd lands will not paye above a tenth for ye mines and a tenth of ye salt with a twentieth part of ye profits of ye earth, w'ch tenths and twentieths are entierly all ye rights and duties can be pretended upon ye s'd 2 degr., and therefor it is just and reasonable yt they yt shall be of good conditions and disburse so much moneys shall have ye same in half, who otherwise should have nothing, and this is ye least favour can be granted unto those who shall forthwith so largely people any new plantations.

2. To grant lands unto any particulars is to ruine their plantations beforehand, and so to forstall and confounde ye work yt never any large, lasting and multiplying plantation can be raised, *tho'* spe. by reason of nothing of this nature can be effected but by ye principall undertaker to give ye same order and union to all,
428 and have as well adventure as hand in the common work.

3. The pr'll undertakers will be at very great charge to build fortifications, paye such men, sold'rs and all other P. officers to build howses fitting and strong; to trans. all sort of cattail and poultrey, as also beasts of service, w'ch is easily to be observed by the planters, &c., in Virginia, and the successe thereof.

4. That ye Lord *president* shall be, and his means bee from all publicy: charges and expenses w'h soever of gover'm't, &c.

These A and B make appeare their good affection by offering y'h after 3 yeare 1,000 lb., and after ye fifth year 2,000 lb., out of ye whiche province for ye * * * forasmuch as if they cannot effect the same they will discharge ye Lord of all his contract, and so leave him likely to dispose of his lands againe unto all or any other, as he shall have or see occasion for his better profit, loging or advantage.

No. 15.

State Papers, Colonial, Vol. 5, No. 40.

Nov. 30TH, 1629.

Right Hon'ble:

May it please yo'r lordhps to understand that about the beginninge of October last, there arrived in this colony, the Lord Baltimore from his plantation in Newfoundland, w'th an intention, as wee are informed, rather to plant himself to the Southward then settle here, although since he hath seemed well affected to this place, and willing to make his residence therein, w'th his whole family. We were readyly inclined to render unto his lordsh'p all those respects w'ch were due unto the honor of his person or w'ch might testifie w'th how much gladness we desired to receive and entertain him, as being

of that eminence and degree; whose presence and affection
429 might give great advancem'ts to this plantation. Whereupon according to the instructions from yo'r lord'h'pps, and the usual course held in this place, wee tendered the oaths of supremaire and aliedgance to his lordsh'p, and some of his followers, who making a profession of the Romishe religion, utterly refused to take the same, a thing w'ch we could not have doubted in him, whose former employm'ts under his late ma'ty, might have indeared to us a *privation*, he would not have made deny all of that in poynt, whereof consisteth the lagalitie and fidelitie w'ch every true subject oweth unto his soveraigne. His lord'hp then offered to take this oath, a copy whereof is included, but in true discharge of the trust imposed in us by his ma'tie, wee could not imagine that soe much latitude was left for us to decline from the prescribed forme, so strictly exacted and soe well justified and defended by the pen of our late soveraigne, Lord King James, of happy memory. And among the many blessings and favors for w'ch wee are bound to blesse God, and w'ch the colony has received from his most gratious ma'tie, there is none whereby it hath beene made more happy than in the freedome of our religion w'ch wee have enjoyed, and that no Papists have beene suffered to settle *their* abroad amongst us. The continuance whereof wee most humbly implore from his most sacred ma'tie, and earnestly beseech yo'r lord'hps that by your mediations and councells the same may be established, and confirmed unto us. And wee as our duety is w'th the whole colony, shall always pray for his ma'ties long life and eternall felicity from whose royall hands this plantation must expect her establishment, and for whose honor God hath reserved so glorious a worke as the p'fection thereof. Wee humbly take our leaves.

Yo'r lord'shp's very humble serv'ts,

SAM. MATHEWE,
JOHN POTT,
ROGER SMYTH,
W. CLAYBOURNE.

The 30th November, 1629.

(Addressed:) To the right ho'ble the lords of his ma'ties most ho'ble pryvy councell.
(Endorsed:) From Virginia, 30th Nov'r, 1629.

430 I certify that the above is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 3d, 1871.

Instructions of the King to Lord Culpeper.

8th. You shall administer the oaths of allegiance and supremacy to the members and officers of the council and assembly, all judges and justices, and all other p'sons that hold any office in the s'd

colony by vertue of any patent under our great seal of Engl'd or ye publick seal of Virg'a; and you are to p'mit a liberty of conscience to all other p'sons (except Papist), soe they be contented with a quiet and peaceable enjoyment of it, not giving offence or scandal to the government.

Answer.

All officers whatsoever, both civill and military, have constantly taken the oaths of allegiance and supremacy, according to the first part of this instruction; and in pursuance of the latter part I have stopped execution given against one John Plaesants, a quaker, indited in Henrico county upon the statute of twenty pounds p'r month for not coming to church, and for goeing to a conventicle until his matie's pleasure should be known therein, the said Plaeseants having carryed himself peaceably and quietly and having never given offence to the gouvernment.

431 Copied from the British Archives.

State Papers, Colonial, Vol. 5, No. 27.

Lord Baltimore's Case un-cased.

CHAPTER 143. "The Lord Baltimore's Case" Concerning the province of Maryland, adjoining to Virginia, in America; with full and clear answers to all material objections, touching his rights, jurisdiction, and proceedings there, and certaine reasons of state why the Parliament should not impeach the same; unto which is also annexed a true copy of a commission from the late king's eldest son to Mr. William Davenant, to dispossess the Lord Baltimore of the said province, because of his adherence to this commonwealth. London: Printed in the years 1653.

The Lord Baltimore's Case.

Concerning the Province of Maryland, Adjoining Virginia, in America, &c.

In 1632, the Lord Baltimore had a patent granted to him, and his heirs, of the said province of Maryland, with divers privileges and jurisdictions for the government thereof; the better to encourage him to settle a colony of English there, whereby to prevent the Dutch and Swedes from incroaching any nearer to Virginia, Maryland being between Virginia and the Dutch and the Swedes plantation on that continent, and New England beyond them to the Northward.

The Lord Baltimore hereupon, in 1633, sent two of his own brothers with above 200 people, to begin and seat a plantation there, wherein and in the prosecution of the said plantation ever since hee and his friends have disbursed above 40,000 pounds, whereof 20,000

pounds, at least was out of his own purse. And his said two
432 brothers died there in the prosecutions thereof.

In Septem. 1651, when the councell of state sent commissioners from hence, to-wit: Captains Dennis Steg and Captain Curtis, to reduce Virginia to the obedience of the parliament, Maryland was at first inserted in their instructions to be reduced as well as Virginia, but the council being afterwards satisfied that the plantation was never in opposition to the parliament; that Captaine Stone, the Lord Baltemore's deputy then, was generally knowne to have been always zealously affected to the parliament, and that divers of the parliament's friends were by the Lord Baltemore's speciall direction received into Maryland and well treated there, when they were fain to leave Virginia for their good affection to the parliament. Then the councell thought it not fit at all to disturb that plantation, and therefore caused Maryland to be struck out of the said instructions; which was twice done, it being by some mistake or other put in a second time.

In this expedition to Virginia, Captain Dennis and Captain Stegg, the two chief commissioners, were cast away, outward bound in "the Admirall," of that fleet, which was sent from hence upon that service; and with them the original commission for that service was lost.

But Captain Curtes, having a copy of the said commission and instructions with him in another ship, arrived safe in Virginia, and there being also nominated in the said commission two other persons resident in Virginia, to-wit: Captain Bennet and Capt. Clayborn (known and declared enemies of the Lord Baltemore's) they together with Capt. Curtes proceeded to the reducement of Virginia, which was affected accordingly upon articles, among which one was that the Virginians should enjoy the antient bounds and limits of Virginia, and that they should seek a charter from the parliament to that purpose.

In the reducement of Virginia, Captain Stone (the L'd
433 Baltemore's deputy of Maryland) sent to the commissioners, at the first arrival of the fleet in Virginia, to offer them all the assistance he could, and did actually assist them therein with provision of victuall and other necessaries, as will be testified to (if need be) by Mr. Edward Gibbons, major-generall of New England, and divers others, who were then there and eyewitnesses of it, and are now here.

Notwithstanding which, the said commissioners, after Virginia was reduced, went to Maryland, and upon pretence of a certaine clause (which it seems by some meanes or other was put into their instructions after Maryland was struck out as aforesaid), to-wit: that they should reduce all the plantations in the bay of Chesapeake to the obedience of the parliament, and some part of Maryland, where the Lord Baltemore's chief colony there is seated, being within that bay; as well as most of the plantations of Virginia are. They required Capt. Stone and the rest of the Lord Baltemore's officers there, first to take the ingagement, which they all readily subscribed, and declared that they did in all humility submit themselves to the government of the commonwealth of England in chief, under God.

Then the commissioners then required them to issue out writs and processe out of the L'd Baltemore's courts there in the name of the keepers of the "Liberty of England," and not in the name of the "Lord Proprietary," as they were wont to doe; wherein they desired to be excused; because they did not conceive the parliament intended to devest the L'd Baltemore of his right there; and that they understood out of England that the councell of state intended not that any alterations should be made in Maryland. That the king's name was never used heretofore in the sayd writs, but that they had always been in the name of the lord proprietary, according to the privileges of his patent ever since the beginning of that plantation. That the late act in England for changing of the forms of writs, declared only that in such writs and process, wherein the king's name was
434 formerly used, the keepers of the liberty of England should for the future *be used instead thereof*. That the continuing of the writs in the lord proprietary's name was essential to his interest there; and that therefore they could not, without breach of trust, concur to any such alteration. Whereupon the commissioners demanded of Captain Stone, the Lord Baltimore's commission to him, which he delivered, and then without any other cause at all, they removed the said Captain Stone, and the Lord Baltimore's other officers, out of their imployment there under him; and appointed others to manage the government of that plantation till the pleasure of the counsell of State and Parliament, should be further known. Therein seized upon all the records of the place, and sent divers of them hither, into England. All which they did without any opposition at all from Capt. Stone, or any other of Lord Baltimore's officers, in regard of their respect and reverence to the commissioners of Parliament.

The colony of Virginia, not long after, sent one Colonell Mathews hither into England, to get their articles confirmed by the Parliament, which were read in the House on the 31st August, 1652. Upon the reading whereof, a petition of the Lord Baltimore's, and of about twenty more considerable Protestant adventurers and planters, to and in Maryland, who are known by divers members of the House to have bee- well affected always to the Parliament, and who signed the said petition, was also read; whereby it was humbly desired that before the House passed that article, concerning the old limits of Virginia, the said petitioners might be heard by their council. In regard, Maryland was long since esteemed part of Virginia, and therefore they were concerned in that article. And they further humbly desired in the sayd petition, that the Lord Baltimore's officers might be restored to their places in Maryland under him; and that the petitioners might quietly enjoy the privileges of the sayd patent of Maryland; upon confidence whereof they had adventured so much of their fortunes thither as aforesaid.

435 Whereupon divers parchments, under the Lord Baltimore's hand and seale, which were sent out of Maryland by the sayd Bennet and Capt. Clayborn, were at that time produced to the House by a member thereof, who it seems conceived that there would appear something in them whereby the Lord Baltimore had forfeited his

sayd patent, or at least, that his authority in Maryland was not fit to be allowed of by the Parliament.

The house, on the 31 August, 1652, referred the sayd article concerning the old limits of Virginia to the committee of the navy, to consider what patent was fit to be granted to the inhabitants of Virginia, and to hear all parties, and consider of their particular claims, and report the same, with their opinions, to the parliament; and the sayd parchments delivered in concerning Maryland, were also referred to the same committee.

The Lord Baltemore accordingly made his claim before the said committee, unto whom he delivered a true copy of his said patent, and desired, therefore, that the patent, which the Virginians were suitors for, might not extend to any part of Maryland, it being made appear to the said committee, that that province had not been for these 20 years last past, accounted any part of Virginia. And that the Virginians had neither possession of any part thereof, at the time of the making of the said articles, nor for 20 years before; nor that the present inhabitants of Virginia had ever at all any right unto it.

Then upon the suggestion of a member of that committee, certain exceptions against the Lord Baltimore's patent, and his proceedings thereupon in Maryland were shortly after presented in writing, to the said committee, unto which the Lord Baltimore put in his answer also in writing, which was read, and the committee upon debate thereof (it seems) thought not fit to deliver any opinion in the business, but ordered that the whole matter of fact should be stated by a sub-committee, and reported first to the said grand committee, and afterwards to the house.

The exceptions aforesaid were many, but the substance of them are reduceable to these heads following, which are set down
436 by way of objections, with answers to them:

1. Object. A pretended injury done to the Virginians, by the said patent, in regard to Maryland was heretofore part of Virginia.

Answer. The present inhabitants of Virginia had never any right to Maryland, more than to New England, which was part of that country, heretofore called Virginia, as well as Maryland, but distinguished and separated afterwards from it by a patent, as Maryland was. There was, in deed, a patent heretofore granted by King James, in the 7th yeare of his reigne, of a great part of that, Northern continent of America, which was then called Virginia, to divers lords and gentlemen here in England, who were by that patent erected into a corporation, by the name of a Virginia company, in which tract of land granted to the said company, that country which is now called Maryland, was included; but that patent was legally evicted by a *quoranto* in the then king's bench in 21 yeare of the said King James, 8 or 9 years before the patent of Maryland was granted to the L. Baltimore, which company or corporation the inhabitants of Virginia desire not now to revive by vertue of their article above mentioned, but abhor the memory of it, in regard of the great oppression and slavery they lived in under it when it was on foot, so as they, never having had any patent right or possession

of the sayd province of Maryland, there could be no injury done to them by the Lord Baltemore's said patent. After the eviction of the sayd Virginia Companie's patent thereof. For it was as free in the late king's power to grant any part of that continent not possessed before by any legall grant, then in force from the crown of England, (which Maryland was not at the time of the Lord Baltimore's patent thereof), as it was for King James to grant the aforesaid country to the said Virginian company.

2. Object. A pretended wrong done by the Lord Baltemore to the above mentioned Capt. Clayborn, in dispossessing him of
437 an island in the sayd province, called the Isle of Kent.

2. Answer. It was a business above 14 years since, upon a full hearing of both parties then present, decided by the then lord's commissioners for forraign plantations, against the sayd Capt. Clayborn and his partners, Mr. Maurice Thomson and others; and the sayd Capt. Clayborn, hath himselfe, also by divers letters of his, to the Lord Baltemore, acknowledged the great wrong he did him therein; which letters were proved at the committee of the navy, and are now remayning with that committee. Wherefore, the Lord Baltemore humbly conceives, that against the sayd Capt. Clayborn's owne acknowledgement, and a *determination* so long since of that business, and above 14 years quiet possession in the Lord Baltemore of the sayd island. The parliament will not think fit upon a private controversie of *meum* and *tuum* between him and the sayd Clayborne, to impeach his patent of the sayd province, or his right to the said island, but leave both parties to their legall remedy.

3. Object. That the said patent constitutes an hereditary monarchy in Maryland; which is supposed by some to be inconsistent with this Commonwealth.

3. Answer. The jurisdiction and stile which the Lord Baltemore useth in Maryland is no other then what is warranted in his patent, (as may appeare by his answer at the Committee of the Navy, to the exception above mentioned, and by perusall of the said patent) and that is onely in the nature of a county palatine, subordinate and dependent on the supreme authority of England. For by the patent, the soveraign, dominion, allegiance, the fifth part of all gold and silver oare, which shall happen to be found there; and severall other duties are reserved to the late kings, his heires and successors, who are now the parliament of this commonwealth. And although it be true that a monarchicall government here, which should have any power over this commonwealth, would not be consistent with it, yet certainly any monarchical government in forraigne parts,
438 which is subordinate to, and dependant on this commonwealth, may be consistent with it, as well as divers kings, under that famous commonwealth of the Romans, heretofore were; insomuch as they thought it convenient and fit to constitutte divers kings under them. All lords of manors or liberties here in England may in some kinds be as well accounted monarchs, within their severall manors and liberties, as the Lord Baltemore, in Maryland, for writs issue at this day in their names out of their courts, within their respective manors and liberties; and not in the name of the

keepers of the liberties of England. Oaths of fealty are taken to them by their tenants, and they have great royalties and jurisdictions; some more than others, and some as great in proportion within their said manors and liberties as the Lord Baltemore hath in Maryland, except the power of making laws, touching life and estate, power of pardoning, and some few others of lesser concernment, which although that may not be convenient for any one man to have in England, yet are they necessary for any (whether one man or a company,) that undertakes a plantation in so remote and wilde a place as Maryland, to have them there especially with such limitations as are in the Lord Baltemore's patent; to wit, that the laws be made with the consent of the freemen of the said province, or the major part of them or their deputies; and that they be consonant to reason, and be not repugnant or contrary, but as near as conveniently may bee agreeable to the laws of England, which limitations the Lord Baltemore has not exceeded, as may appeare by his answer to the Committee of the Navy to the exceptions above mentioned. And although it be not fit that any one person should have a negative voyce here in the making of lawes, yet certainly as no company, so no single man, that is well in his wits, will be so indiscreet as to undertake a plantation at so vast an expense, as the Lord Baltermore hath; if after all his charge, pains and hazards, which are infinite in such a business, such necessitous, factious people, as usually new plantations consist of, for the most part, and went thither
439 at his charge by contract or agreement with him, should have power to make lawes to dispose of him and all his estate there, without his consent, and he be left without remedy, for before the supreme authority here, upon any appeal to it, will probably be at leisure from business of greater consequence, or perhaps have convenient means to relieve him, he may be ruined and destroyed Such chargeable and hazardous things as plantations are, will not be undertaken by any, whether it be a company or a single man, without as great incouragements or priviledges as are in the Lord Baltemore's patent of Maryland. And if it be not any prejudice, as certainly it is not, but advantageous to the interest and honor of this commonwealth, that an Englishman, (although a recusant, for the Lord Baltimore knows of no laws here against recusants which reach into America,) should possess some part of that great continent of America, with the privileges and jurisdictions aforesaid, dependant on and subordinate to it, then the Indian kings, or forreigners, (as the Dutch and Swedes aforementioned,) who have no dependency on it, as certainly it is. Then he hopes the parliament will not think it inconsistent with this commonwealth but just, that he should enjoy the rights and priviledges of his patent. Upon confidence whereof, he and his friends have adventured the greatest part of their fortunes, for the honour of this nation, as well as their own particular advantage, especially seeing no other person hath any wrong done him therein, for none are compelled to go to Maryland, or to stay there, but know before hand upon what terms they are to be, in that place. And the English inhabitants of that province are so well pleased with the government constituted there by the said patent, as that by generall consent of the Protestants, as well as

Roman Catholiques, it is established by a law there, as well as freedome of conscience and exercise of religion within that province, is to all that profess to believe in Jesus Christ, as appears by the laws of that province, now in the hands of the said Committee of
440 the Navy. Which makes it evident, that a petition, lately read at the committee, with ten unknown hands to it, in the name of the inhabitants of Maryland, against the Lord Baltemore's said patent, is eyther obscure factions fellows, which is easie to bee procured by any ill affected person against any government whatsoever.

4. Object. That the Lord Baltemore gave his assent to certaine lawes for Maryland, in 1650, in one of which lawes the late King Charles is stiled the late high and mighty Prince Charles, the first of that name, King of England, &c. And in another of the said laws it is enacted, that the Lord Baltemore shall have 10 s. a hogshead for all tobacco's shipt from Maryland, in any Dutch vessell, and bound for any other port then his Majesties; whereby some would infer that hee did acknowledge a Charles the Second to be king, &c., for that the word first in one law inferred a Secone and by the word majesty in the other law, the Lord Baltemore must mean the late king's eldest son; for the late King Charles was dead when the Lord Baltemore assented to that law, to wit, in August, 1650.

4. Answer. To this is answered: That although those lawes were assented unto by the Lord Baltimore in August, 1650, yet it appears by his said declaration of assent that some of them were enacted in Maryland by the assembly there in April, 1649; whereof the law was one wherein those words, to-wit: "any other ports than his majestie's," are inserted (as was proved to the said committee of the navy). At which time the people in Maryland could not know of the late king's death, which was but in January then next before. In February, March and April, ships usually return from those parts, and in September, October and November goe thither; so as the assembly in Maryland could mean nobody by that word majesty but the late king; and the Lord Baltemore could have no other meaning but what the assembly had, for he did but assent to what they had done and was before enacted as aforesaid.

As to the other law wherein those other words are inserted,
441 to-wit: "the late high and mighty Prince Charles, the first of that name," &c., it was one of those laws which were passed by the assembly in Maryland, in April, 1650, when the people there knew of the late king's death, to-wit: a year after the other law above mentioned, with divers others which were enacted in April 1649, as aforesaid, though in the ingrossment of them all here (when the Lord Baltemore gave his assent to them altogether in August 1650), it is written before it because they were transposed here in such order as the Lord Baltemore thought fit, according to the nature and more or less importance of them, placing the act concerning religion first, &c. And as to those words "the first of the name," &c., the word first doth not necessary imply a second, as some infer upon it, no more then when the first-born of thy sonnes were commanded to be given to God did imply a second which was

performed though there were never a second. The word first hath relation to the time past, and not to the time to come. King James is stiled in history James, the first of that name, king., &c., though there were never a second of that name king of England, &c. And it is usually written and said that a king died in the first year of his reign, when he lived not to enter into a second; the like whereof may be made out by many other instances. And as the Lord Baltimore is confident the assembly in Maryland had no intention by those words "Charles, the first," &c. to infer a second king of that name, no more had he, in his assent to that law, any such thought or meaning. And the comportment of him and his officers in Maryland, above mentioned, towards the parliament and their friends, doth sufficiently confirme it.

Among other privileges granted to the L. Baltemore and the inhabitants of Maryland by his said patent, one is (by an express clause therein inserted) that the said province should not from thenceforward be or be reputed any part of Virginia, or bee dependant or subject to their government in anything (although
442 the government of Virginia was then immediately in the king's hands), but was by the said patent (in express words) separated from it; and so it hath been ever since; which was one of the chieftest incouragements, upon confidence whereof the L. Baltemore and others adventured so great a part of their estates thither as aforesaid. For it was the privileges and immunities, and not the land only, granted by the said patent which did chiefly induce the Lord Baltemore to make so great an adventure, without which he would not certainly, upon the conditions of a common planter, have disbursed anything upon a plantation in America. Wherefore he hopes the parliament will not thinke it just or fit to deprive him and the inhabitants of Maryland of so important a privilege (which is their inheritance, and dearly purchased by them), by putting them now under the government of Virginia, upon colour of any articles agreed on when the Virginians were declared enemies of the commonwealth; and the rather because, even in point of policy also, (as is humbly conceived) for certain reasons of state hereunto annexed, it will be more advantageous to the honour and interest of this commonwealth to keep those two governments still divided, and to preserve and to protect the Lord Baltemore's rights and priviledges aforesaid in Maryland, than to destroy either of them.

Reasons of State Concerning Maryland in America.

1. First. It is much better to keep that government still divided from Virginia, (as it has been for these twenty years last past) then to unite them, for by that means this commonwealth will have the more power over both, by making one an instrument (as occasion shall requir*ed*), to keep the other in its due obedience to this commonwealth.

2. Secondly. In case any defection should happen in either colony (as lately was in Virginia), the other may be a place of refuge for such as shall continue faithful to this commonwealth, as Maryland

lately was. Upon that occasion, which it could not have
443 been, in case the government of that place had been at that time united unto, or had any dependence on Virginia.

3. Thirdly. It will cause an emulation in both; which of them shall give the better account of their proceedings to the supreme authority of this commonwealth, on which they both depend, and also which of them shall give better satisfaction to the planters and adventurers of both.

4. Fourthly. The Lord Baltemore having an estate, and his residence in England, this commonwealth will have a better assurance of the due obedience of that plantation, and the planters and adventurers thither, of having right done unto them in case the government thereof have still a dependence on him, and he upon this commonwealth (as he had before on the late king), then if the government of that place, at so remote a distance, should be disposed of into other hands, who had little or nothing here to be responsible for it, and whose interest and residence were wholly there.

5. Fifthly. By the continuance of his interest in the government, there of this commonwealth, and the people there, are eased of the charge of a deputy governor, which he at his own charge maintains; the inhabitants there being yet so poor (and so like to be for many years), as they are not able to contribute anything towards it.

6. Sixthly. If the Lord Baltemore, should by this commonwealth, be prejudiced in any of the rights and priviledges of his patent of that province. It would be a great discouragment to others in forraign plantations, upon any exigency to adhere to the interest of this commonwealth, because it is notoriously known that by his express direction, his officers and the people there did adhere to the interest of this commonwealth, when all other English plantations, (except New England), declared against the parliament, and at that time received their friends, in time of distress, for which he was like
divers times to be deprived of his interest there, by the colony
444 of Virginia and others, who had commission from the late king's eldest sonne for that purpose, as appears by a commission, granted by him to Sir Wm. Davenant, the original whereof remained with the *cancel* of state, and a true copy thereof is hereunto annexed.

A true copy of a commission from the late king's eldest sonne to Mr. William Davenant, concerning Maryland, the original whereof remains with the councel of state.

CHARLES R.

Charles, by the grace of God, king of England, Scotland, France and Ireland, defender of the faith, &c., &c., to our trusty and well-beloved Sir William Davenant, Knight, and to all others whom these presents shall come, Greeting:

Whereas, the Lord Baltimore, proprietary of the province and plantations of Maryland, in America, doth visibly adhere to the rebells of England, and admit all kinde of schismaticks and sectaries,

and other ill-affected persons, into the said plantations of Maryland, so that we have cause to apprehend very great prejudice to our service thereby, and very great damage to our plantations in Virginia, who have carried themselves with so much loyalty and fidelity to the king, our father of blessed memory, and to us, know yee therefore, That we, reposing speciall trust and confidence in the courage, conduct, loyalty and good affection to us, of you, Sir William Davenant, and for prevention of the danger and inconveniences above-mentioned, doe by these persons nominate, constitute and appoint you; our lieutenant governor of the said province or plantations of Maryland, with all posts, castles, plantation posts and other strengths, thereto belonging, to have, hold exercise and enjoy the said place, and command of our lieutenant governor of Maryland, during our pleasure, with all rights, privileges, profits and allowances, any wayes appertaining or belonging to the same; and,
445 although wee intend not hereby to prejudice the right of the proprietary in the soyle, but have for our security thought fit to intrust you during these troubles. Wee, notwithstanding, give you full power and authority to doe all things in the said plantations which shall be necessary for our service, and for securing them in their loyalty and obedience to us, and prevention of all dangers that may arise from thence to our loyall plantations in Virginia. Further requiring and commanding you to hold due correspondence with our trusty and well beloved Sir William Berkley, Knight, our governor of the said plantations of Virginia, and to comply with him in all things necessary for our service and the mutuall good of both plantations. Requiring and commanding hereby all officers and ministers and all others, our subjects, whatsoever, of the said plantations of Maryland, to admit and receive our said lieutenant governor, according to this our commission, and to obey and pursue your order in all things, according to the authority we have given you; and likewise requiring and commanding our governor and councell of Virginia; and likewise all other, our loving subjects of Virginia, to bee aiding and assisting to you, not onely to the settling and establishing of your authority, as our lieutenant governor of Maryland, but also in all such helps and assistances, as may be necessary for your preservation there, and for the mutual good of both plantations, as aforesaid.

Given at our court in Jersey the 16-60 day of February, 1650-49, in the second yeare of our reigne.

Chapter 144. Virginia and Maryland, or The Lord Baltemore's Printed Case uncased and answered. Shewing the illegality of his Patent and usurpation of Royal Jurisdiction and Dominion there. With the Injustice and Tyranny practised in the Government against the Laws and Liberties of the English Nation, and the Just Right and Interest of the Adventurers and Planters. Also, a Short Relation of the Papists late Rebellion against the Government of his Highness, the Lord Protector, to which they were reduced by the Parliament's Commissioners; but since revolting, and by Lord
446 Baltemore's instructions caused to assault the Protestants there in their Plantations there—in number repulsed, some

slain, and all the rest taken Prisoners. To which is added a Brief Account of the Commissioners proceedings in the reducing of Maryland, with the Grounds and Reason thereof; The Commission and Instructions by which they acted. The Report of the Committee of the Navy concerning that Province; and some other Papers and Passages relating thereunto. Together with the Copy of a Writing, under the Lord Baltemore's Hand and Seal, 1644. Discovering his Practices, with the King at Oxford, against the Parliament, concerning the Londoners, and others, trading in Virginia.

"For the oppression of the poor, for the sighing of the needy, now will I arise saith the Lord. I will set him in safety from him that puffeth at him."—Psal. 12:5.

London Printed, and are to be sold at the Crown in Popes, headally, and in Westminster-Hall. 1655.

Virginia and Maryland, or the Lord Baltemore's Printed Case Uncased and Answered.

In the year 1607, divers preceding discoveries having confirmed an opinion, that the country of Virginia was fit for plantation, it pleased God to affect the mindes of very many worthily disposed noblemen, gentlemen, and others, to conceive it as a matter of great religion and honour to undertake the work of perfecting a Christian plantation in those parts. Whereupon King James was pleased to become the first founder of this noble work. And by his letters patents, form time to time renewed and enlarged, granted all ample priviledges and immunities, both to those that managed in England and those that went to inhabit. Therewith gave so an encouragement, that fifty Earls and Barons, three hundred and fifty Knights, and six hundred gentlemen and merchants of primest rank,
447 became incorporated, and were originally named in the letters patents, by the name of the Company of Virginia; being a greater union of nobles and commons than ever concurred to such an undertaking. But nevertheless, partly by the natural difficulties incident to all new plantations, but chiefly through the unnatural and petty impediments arising by the cross agitations of two powerful factions in the company, the work went heavily on the first twelve years, appearing desperate in the severall ill successes thereof. And though afterwards some what advanced and prosperous, yet in the year 1621, by the fatal blow of a massacre, it was almost shattered to pieces, and brought to a very low and calamitous condition. Which occasion the contrary faction presently took hold of, insomuch that they exceedingly slighted the action; and *not to* cast aspersions on the country and on the whole management of that affair. And then further strongly possessed and advised, the then king, against the form of the companies government; as consisting of an excessive number of councellors, and a confused popularity, as being a nurse of parliamentary spirits, and obnoxious to monarchical government. Thereupon order was made upon the eighth day of October, 1623, at the council table, whereby the company were

moved to give in their assents for surrendering their patent and altering their form of government, and a new one proposed, wherein the interest and rights of all men should be preserved. Which order the company not submitting unto, a *quo warranto* was directed for the calling in of their patent, and an advantage taken upon their mispleading. The patent was condemned in Trinity term following. For many years after, not vacated upon the record in the office of the rolls, whereby some that fought the overthrow of the Lord Baltemore's patent for Maryland in the beginning of the parliament, 1640, took out the Virginia patent again, under the broad seal of England, therefore thought by primest lawyers not to be unquestionably in force, at least to point of interest, and that patent of Maryland
448 unconsistent and void.

Thus in brief was the late company dissolved, and a commission given to divers lords and others, for present directing and ordering the affairs of Virginia; and that they should advise, touching a better form of government, for advancing and establishthe colony. Then issued also severall proclamations and several orders from the council table, with great assurances, under the broad seal and privy seal that all men with the adventurers and planters, should be assured that their rights and interests should be conserved and enlarged onely alteration in point of government. But both that commission and renewing of the companies charter expired, and all those proceedings were delayed by reason of the death of King James, which then suddenly ensued. The principal scope of that commission was that they should finde a better form of government for the country's advancement, and there in was especially promised the conservation of every man's right intentions, worthy of the wisdom and justice of so great a prince. But nothing was done by those commissioners, touching either of those ends, not by those by whose prosecution these things *hanged*, who having attained their private ends of spleen and profit. Upon the changes and revolutions of ensuing times, deserted the interest of the colony, and left her, weltering in her blood, unsupplied with ammunition and arms, in the heat of a difficult war with the Indians, the burden and charges whereof was onely undergone by the remaining planters, who were then forsaken by their former friends, were constrained both to work and fight for their lives and substance, and thereby preserve the colony from desertion, and at last restored it, by the blessing of God, to peace and plenty.

And then about the year 1633, Lord Baltemore pretending, though not truely, the greater part of the country was emplanted, procured that the aforesaid judgment, so long delayed was entered, and obtained a patent for that part now called Maryland, which he hath since held, with a few people, and small adventurers, *rebat-*
449 *ting* of those to whom it belonged from planting of it. Destroying and ruinating those formerly seated under Virginia, at the isle of Kent, and interdicting trade with the Indians for furs, discovered and begun by the Virginians, by direction and commission from the king, which since by this means is enjoyed by the Dutch and Swedes, with profit of many thousand pounds yearly;

which trade had been solely in the English nation's hands, had not the Lord Baltemore interdicted it, and seized all vessels, and displanted these plantations.

And those Swedes and Dutch do trade for great quantities of guns, powder and shot, with our Indians, to the total endangering this colony, if not timely prevented. Such a ground work, had the patent of Maryland, upon the rights and labours of others and as unreasonable and unjust, have been the whole proceedings and management of their colony and interests. At their first arrival surprising and confiscating many vessels, with the goods of divers, that they found trading with the natives, under the commissions of Virginia, which they had enjoyed neer thirty years. And professing an establishment of the Romanish religion, onely they suppressed the poor Protestants among them, and carried on the whole frame of their government in the lord proprietary's name. All their proceedings, indicature, tryals and warrants in his name, power and dignity, and from him onely, not the least mention of the soveraigne authority of England, in all their government to that purpose, forceably imposing oaths (judged illegal in a report made by a committee of the council of state (1652), to maintain his royall jurisdictions, prerogatives and dominions as absolute lord and proprietary, to protect chiefly the Roman Catholick religion, in the free exercise thereof. And all done by yeerly instructions from him out of England, as if he had been absolute prince and king. By all which is easily evident that the "patent of Maryland" was grounded upon no good foundation.

The king misinformed when in nothing more deeply and directly could the honour and justice of his throne be concerned then in confirming and conserving the interest of so great a conjunction of nobles, knights, gentlemen and merchants, who so piously and worthyly adventured their moneys, and expended their estates and labours; whose rights and interests through their patent were called in for the time in point of government, yet had received the most solemn declarations and assurances, under the broad seal, and privy signet, orders of councels, letters to the colony, and by general proclamations there and here.

That it was impious to think that either the then king, or King James, being rightfully informed would ever have granted such a patent as this Maryland, it being ne'er two-thirds parts of the better territory of Virginia; and as no way consistent with equity and the honor and publick faith of the kingdoms, so was no way agreeable (in the absolute and regal power assumed and executed by him) to the late monarchical government, or to the present author-ty of the commonwealth of England, under his highness the lord protector, and most injurious to the rights and interests of the noble adventurers, and the painful indefatigable planters, who had so long under God conserved the country from total ruine.

A short and successive narration, of most of the aforesaid publick assurances, follows, viz:

1. By an order of the council the eight of October, 1623, before the quo warranto brought to arm the minds of the adventurers and

planters, against any mistaken fear and apprehension as if their estate should receive prejudice.

2. And whereas the lords of the council were informed that the intended change of the government had begot a general discouragement amongst the adventurers, notwithstanding sundry other declarations made at the board, *viva voce*, and that former act of councel.

Their lordships were pleased by an order of the twentieth of
451 October, 1623, to declare again that there was no other intention, but onely and meerly in reforming and change of the present government; and that no man shoulr receive any prejudice, but have his estate fully and wholly confirmed, and if in anything defective, better to be secured. Which order was sent over by their lordship's command, and published in Virginia for encouragement of the planter.

3. King James was also pleased to express the same in his commission to sundry of his own privy councel, and other commissioners, for the time being, for the affairs of Virginia, July 5, 1624, that his intention was to alter the letters patents as to the form of government, but with the preservation of the interest of every adventurer and planter.

4. The like declaration of the king's intention was exprest in the commission then sent to Sir Francis Wiat, and the councel then appointed by his majesty to direct the affairs and people in Virginia; and the like hath been inserted in all King Charles' commissions, and of all the governments of Virginia that have been since that time to this present.

5. The said King Charles, by his proclamation, May 13, 1625, declared that his aim was onely to reduce the government in such a right course as might best agree with the form held in the rest of his monarchy, and not intended to impeach the interest of any adventurer or planter in Virginia.

6. The lords of the councel, by the letters dated the 24th of October, 1625, declare to the colony, that the king's pleasure was to preserve every man's particular right, and the planters to enjoy their former priviledges with addition of other requisite immunities, encouraging also the planter to discoveries both by sea and land, and to perfect the trade of furs; which letter according to their lordships' command, was published in Virginia. But Captain Clayborn, who was thereupon employed by commission from the governor,

under the king's broad seal and seal of the colony, and then
452 discovered those parts of the trade of Maryland, was thereby utterly undone, supplanted and expelled by the Lord Baltimore.

7. The king also, for the encouragement of the planters, by his royal letters the 12th of September, 1628, was pleased to promise to renew and confirm unto the colony, under the great seal of England, their lands and priviledges formerly granted to them.

8. And when the generall assembly, consisting of the governors and burgesses of the whole colony, complained to the lords of the council of the interrupting of their trade by the Lord Baltemore's

deputies, their lordships were pleased, by their letter July 22, 1634, to signifie that the plantation of Virginia should enjoy their estates and trade with the same freedom and priviledges as they did before the recalling of their patent.

By all which it appears, that howsoever the government could not be reduced from that popular form of the company in England, but by revocation of the patent itself; yet in respect of both those kings' declarations, and the lords' orders, the adventurers and planters of Virginia, as to their rights and priviledges, according to the rule of equity, remain in the same condition as if no such judgment had been given.

Object. But they answer hereunto to this effect, though not truely *neither:* That the Lord Baltemore's patent takes in no part that the Virginians had then planted, and so the interests of all men is preserved; and that Maryland is no other than a particular plantation, as the company used to grant to divers adventurers and planters, and the king might do as much as the company while they stood.

Answer 1. We reply: That the adventurers and planters were encouraged to expend their estates in so vast a proportion, and to hazard their lives in all extremities, always accompanying new designs and beginnings, in hope that their shares, upon the division of lands, being four hundred miles along the seashore and
453 into the land from sea to sea, would recompence them and their heirs, as in Ireland heretofore and now is done. But this interest, by the patent of the Lord Baltemore's, comprehending neer two degrees, which is an hundred and twenty miles, is wholly taken from them, and scarce is there any room for any adventurers to take up any land due unto them.

It is truely answered, that all the adventurers of the company were tenants in common to all the land which was not actually divided and set out, and their claim cannot be justly thus nullified, and yet their interest said to be reserved.

3. It is granted that the Lord Baltemore may have as large a proportion of land as ever was granted to any by the company, though his adventurers have never been proportionable to some men's. But we think it agreeing to reason that he should people it, and either show his right to it by the adventure of people sent over to plant it, which was by the company appointed to be fifty acres to every person transported thither. Otherwise, how unreasonable is it, he should possess two-third parts of the bay of Virginia, which may perhaps be said to be as big as the kingdom of England and Scotlant, and yet now in many years, have not more men there, except such as have gone from Virginia than can or do plant as much as is contained in a small corner thereof, and those chiefly employed in tobacco. And the great name of Maryland is but in effect made a factory for trade; ammunition and arms being as commonly sold to the Indians (though not altogether so openly) as among the Swedes and Dutch. A nursery for Jesuits, and a bar to keep off other planters from the greatest part of the country left void, and for the most part, not known by him or his.

5. We say, that after we had discovered and brought the Indians of those parts of Maryland to a trade of corn and beaver, by virtue of the king's instructions, under the broad seal of England, with the expense of our blood and estates, and exercised annual intercourse with them above eight and twenty years. How can
454 it be said our interests and rights are preserved, when we are forbidden this trade. Our men slain, vessels and good seized, persons imprisoned, and the whole trade assumed onely to the Lord Baltemore's use, and he not able to manage it either, but left it to the Swedes and Dutch.

6. And chiefly we answer. We claim right by possession, having planted the Isle of Kent almost three years before ever the name of Maryland was heard of, and burgesses for that place sitting in the assembly of Virginia. Whereby it is evident that the Lord Baltemore's suggestions to the king, mentioned in his patent, that those parts were uncultivated and unplanted unless by barbarous people, not having the knowledge of God, was a misinformation, and by it, that patent appears to be surreptitiously and illegally gotten; and if the Lord Baltimore takes away those lands from them who have also purchased the interest of the natives (a right not inconsiderable) and seized their goods, and that in a hostile manner as he hath done, how can it be said that those men's interests and rights are preserved? They being the first discoverers of that island, by virtue of the king's commission, and planted there under the government of Virginia, on the confidence, they apprehended, from the former assurances. And these began in great part the trade of furs.

How unjust an intrusion, then, will the Lord Baltimore's patent appear, which overthrows the interests of so many and such persons? For the company of Virginia were of a nature diversified from other companies, which, if it had not been founded on so good grounds, yet their zeal and pious endeavors to propagate the true Christian religion, enlarge the English domains, and to increase the trade and strength of shipping, and considerably the customers, do deserve justice, with addition of reward for so honorable and good intentions. In the next place, to prove the Lord Baltimore's usurpation of royal jurisdiction and dominion in Maryland, as absolute lord proprietary, there needs no more than his commissions and processes, running on
this stile, viz: We, us, and given under our hand and greater
455 seal of arms, in such a year of our dominion, etc. The oath also that he tenders to all his subjects and the inhabitants, such being the very words thereof, as by the oath itselfe, copied from his own hand, and herewith published, appears. This is surely incompatible to the English nation, that there should be any such principality erected over them. Whereas the books of law teach us, that all writs, executions, and commands, ought to be done in the name of supreme authority onely; and is so appointed by the late platform of government, for all the dominions of the commonwealth, of which this is a part. And by a late ordinance declaring treason upon such penalty, that none ought to exercise any power but in the Lord Protector's name; and these men acting so wilfully, cannot excuse themselves. By the ancient English laws, all those pleas

that concern life and member and pardons, cannot be done in the name of any inferior person, and all writs, indictments and process, as heretofore, so must now only be in the name of the Lord Protector and not in the name of the Lord Baltimore, as he hath assumed in Maryland. And whereas, the Lord Baltimore pretends to the like privileges, as in the county palatine of Duresme, even those privileges of Duresme, and all the other county palatines of England, were, and are taken away, as dishonorable and incongruent to the English nation, by the statute of the 27th Hen., 8, 25. With what strange confidence then doth the Lord Baltimore publish to the world, that these royalties and privileges are warranted by his patent; when as they are contrary to law and to the government now established under his Highness, and to a clause in his patent, wherein it is provided, that no construction be made therof whereby the government in the commonwealth of England should suffer any prejudice or diminution.

Whereby it appears there was as good cause to reduce Maryland as Virginia. The people and general assembly thereof, also
456 complaining of their grievances, among many other exorbitant usurpations of Lord Baltemore's over them, as appears by their complaint in Governor Green's time, made and recorded there by a committee of that assembly. But 'tis known that Governor Green was deposed by Lord Baltemore for suffering that committee, and not proclaiming the King's son as he alledgeth, when no such thing appears *in rerum natura*, nor no word in all his many instructions of the parliament, much less of his pretended affection to them, or their friends, but clean contrary. And 'tis notoriously known, that all the Lord Baltemore's governors usually took the king's part against the parliament, and his brother, Mr. L. Calvert, his only governor, while he lived there, ever declared himself against them. And to evince this irrefrageably, and clearly to demonstrate the management and complexion of this business, both Lord Baltemore himself and his brother, by long solicitations at Oxford, procured and sent over in Anno 1644, commissions in 1644, King's broad seal, to surprise the parliament and London ships in Virginia, and to impose customs, raise regiments, and fortifie the country against the parliament; which appears by several writings under the Lord Baltemore's hand and seal, (one of which is hereunto annexed.) They did with zeal proclaim the King's son, Charles the Second, in Maryland, and some that read it, and assisted therein, of the primest rank, are still continued councellors by him, and never a word of blame. Whereas 'tis evident his own interest is more than circumspectly watcht over and contended for. How can be pretend that his governor, Captain Stone, bare any affection to the parliament, when without check, from himself, in their assemblies, laws, he used the name of King, and His Majesty, and of Charles the First, when the Second was proclaimed there. And why did Lord Baltemore, himself, in England, advisedly consent and approve those laws in terminis, under his hand, in 1650, if such had not been his
457 own thoughts toward the parliament. The commissioners that were employed by the parliament to reduce Virginia, Anno 1652, were commanded to reduce all the plantations, in the

bay of Chesapeak, and then that all writs should issue in the name of the keepers of the libertie of England. They saw not how they could decline this service, well knowing how contrary to those commands and the honor and interests of the parliament, the government of Maryland was exercised, and think strange any should pretend assistance, and supply of victuals from Maryland to that fleet, when no such thing ever was. That the parliament ships were entertained there in his harbors, when as never any of them came at Maryland, nor within near 100 miles therof, save only the Ginny frigate, who went thither to reduce that province. They knew his governor had always borne affection to the king's side, that Charles the second (hath been said), was proclaimed there; that the council were all Papists, or indifferently affected, and that they refused to govern the people, by the laws of England (another clause in the parliament's commission), to which several of their actings, and even Lord Baltemore's instructions were contrary, as in this particular, and many others, appears by the reports of the committee of the navy and the council of state, to whom the parliament referred this cause. A copy of which report is hereunto annexed. And they ruled in Maryland in such an absolute way and authority, as no Christian prince or state in Europe exercises the like.

His governor has an absolute negative voice in all things, and in the assembly of the Burgesses, calls into the upper house (as he term it), whom he will, to over-vote the rest. Places and displaces whom he will in that council, and the Lord Baltemore himself, though in England, appoints all officers, even to the meanest degree, and who flatter him most are sure to have it. His mandates are sent over, to stop justice, and the judges imprisoned for proceeding according to justice. Writs are given out under the governor's hand, in his own case, without any judgment of court, to seize men's goods into
458 the governor's hands. His governors are not finable for any just debts, and so they usually exercise their privileges, even to the oppression and discontent of the people. No appeals allowed from their courts, though consisting of but two men (and those perhaps of no great knowledge or skill in government), or not to the general representative assemblies. It would be infinite to rake in this dunghill, but all indifferent men, that have lived, and been there, know these things to be sad truths. And surely not without cause, have the general assemblies there, most of the council, and the freemen been often contesting with the Lord Baltemore's governors about these things, and yet never could obtain any redress from him, but have resolved to petition the state of England.

Why, therefore, should Maryland, so ill founded, and so ill managed, be wrung from the right of Virginia, against all law and equity, as is before truely set forth? and be established to Lord Baltemore to possess a professed recusane, as his published book intimates; who hath in effect made it a subject of his own domination and tyranny (being his main aim). But to colour it and the better to get friends, first made it a receptacle for Papists, and priests, and Jesuits in some extraordinary and zealous manner, but hath since discontented them. Many times and many wayes, though intelli-

gence with bulls, letters, &c., from the Pope, and Rome, be ordinary for his own interest, and now admits all sorts of religions, and intended 2,000 Irish, and by his own letters *c'ecars* and indemnifies one that said. Those Irish would not have a Bible in Maryland.

His country, 'till he employed Captain Stone, never had but Papist governors and councellors, dedicated to "St. Ignatius," as they call him, and his chapel and holy day kept solemnly. The Protestants, for the most time, miserably disturbed in the exercise of their religion, by many wayes plainly enforced or by subtil practices or hope of preferment, to turn Papists, of which a very sad account, may
from time to time be given even from their first arrival to
459 this very day.

Virginia hath used all good neighborhood towards them, without which assistance and supply, even of all things, they could not have subsisted; for their numbers were inconsiderable and their adventurers small and very little after the first ship, in comparison of such a work. And though Lord Baltemore pretends great adventures with his friends thither, yet none have appeared there to any considerable value from him for many years; only what merchants and some few have done upon returns of tobacco and beaver. So that, in truth, it will appear, and that by his own letters, too, Maryland hath been chiefly planted by Virginia, from first to last, and by people from thence wanting seats in their narrow limits, Maryland taking away above half the country which (as hath been said before) was onely discovered by Virginia, with continual trade and abode of people there for above 20 years, by commissions and warrants in the king's name, and was planted by Colonel Clayborn, under Virginia government, some years before ever the name of Maryland or Lord Baltemore was ever heard of there; which himself knew, though he misinformed the king, and obtained his patent upon pretence of unplanted places onely.

But the many illegal executions and *murthers* of several persons at the Isle of Kent, by the Lord Baltemore's commands and his officers; the imprisonments, confiscations of many men's estates, and of widow's and orphans to the destruction of many families there; especially his seizure of Captain Claiborn's estate, though out of his patent because planted to the value of 6,000 pounds, with the great tyranny and wrong done there, although the then king declared and commanded the contrary, but was disobeyed by the Lord Baltemore's agents, are too long to be inserted here.

Many inconveniencies and losses hath Virginia suffered by Maryland, of which the continual invitation and entertainment of runaway servants, and protecting fugitive persons, and indebted, is not the least. But, above all, it is easie to be made appear that the Lord Baltemore hath continually, ever since their seating there interposed
in the matters of government in Virginia by the potency of
460 his friends in the late king's court, both by placing and displacing the governors, councellors and supreme officers, as they stood affected or were displeasing to him.

Mr. Bennett and Captain Claiborn, being two of the commissioners that were employed by the parliament to reduce Virginia and

Maryland, are strangely taxed by Lord Baltemore for being his declared enemies; indeed, it seems for thire service to the parliament, he is become implacable towards them; though Captain Curtis, another commissioner, now in England, and all Maryland, can testifie how unwillingly and how tenderly they did anything there, and how much they desired and endeavored to have declined any alteration of either Captain Stone, the governor, or the council, would they have issued out writs in the name of the keepers of the liberty of England and have promised to govern according to the laws of England, both of which they refused under their hands, and the commissions being sent to Maryland is since owned by the report of the committee of the council of state, and the Lord Baltemore taxed and blamed for not issuing out writs as they required them; and therefore seems a bold aspersion for the Lord Baltemore to publish that Maryland being struck out of their commission, was afterwards, by some mistake, put into the commission the second time; and, as strange as it seems, that now, since the reduction of Maryland, the Lord Baltemore, in opposition and contempt of the *supream* authority of England, should cause his governor and council most falsely and rebelliously to revolt and recede from the same and give instructions under his own hand, as he had lately done, to issue out all writs and proceedings, in his own name onely, which they have accordingly done, and not the least mention of the lord protectors' name in all their government. This the said commissioners, though they received confirmation of their commission from the parliament, under the seal (the original, the first time miscarrying), yet bore with a long time, onely by letters out of Virginia, admonished Capt. Stone,
and that council of their error, and protested against their act-
461 ings, but they continued obstinate. The commissioners were
desirous still to expect and attend a settlement and determination out of England, and to intermeddle as little as they could. But above a year since Lord Baltemore sends over instructions, and commands, to Captain Stone and his new-made council, all our werst Papists, or indifferent, to seize the lands and estates of all such as would not take the oath of fidelity (as he stiles it) before specified. But the people of Maryland generally abhorred this oath, and justly, as is conceived; especially those of Patuxent and Severn declined to take it as being against their engagement, incompatible with their subjection to the commonwealth of England, and incongruous to swear to serve two absolute superiors. Whereupon Capt. Stone and his council proclaimed them seditious and rebels to Lord Baltemore, and forgot not to include the two commissioners, though in Virginia, under the same name with other opprobrious terms; whereupon the people of Patuxent and Severn and Kent, often and earnestly apply themselves, if possible to have relief from these commissioners; yet they still desirously forbore to intermeddle, hoping it would be done out of England, until after many solicitations Mr. Bennet and Captain Claiborne, with only two men, in July last, went thither in a boat, yet using all fair means. But how ill they were treated for their moderation, intended to be surprised by night and made prisoners, and how they were necessitated to prevent greater mischief, and

the present ruin of hundred of families, to interpose, to have that oath suspended, and the government managed in the lord protector's name (which being denied, to avoid bloodshed, they re-assumed the government out of those hands that so ill managed it, and placed it in others for the time being, under his highness the lord protector, until he should please to signifie his further pleasure,) will appear in a declaration then and herewith published; together with the people's petition, the commissioners' answer thereunto, and in order for setting the government in the hands of Cap't William Fuller and others.

462 The Lord Baltemore, also, since gives particular commission and command to seize the persons of those commissioners, under his hand and seal, dated in November last; and for their service to the lord protector, to proceed against them, as abettors in mutiny and sedition; chides and upbraids Captain Stone for cowardice, provokes him to fighting and bloodshed (a course too often acted in Maryland); appoints another governor, in case he decline it, and yet sends no revocation of the commissioner's reducement, though he acknowledges he sought it earnestly of the lord protector, but could not obtain it; yet to blind and delude Captain Stone and his council, there came over a letter of recommendation from his highness, or one Captain Barber, and by what practice or mistake it is not known a superscription thereon to Capt. Stone, governor of Maryland, and by this (together with a copy of that petition of the merchants and others trading to Virginia, brought in by Mr. Eltonhead, and sent over by Lord Baltemore), Captain Stone and all Maryland fall to arms and disarm and plunder those that would not accept the aforesaid oath. A part of them at last stood upon their guard onely sought Capt. Stone to shew his commission, and they would submit. He caused to imprison their messengers, and being of far greater number, assaulted them at their houses, threatened to have their blood, called them roundhead rogues and dogs, brought whole bagsfull of chewed bullets, rolled in powder, saying the devil take him that spares any, and so falls on, upon the day dedicated to the Virgin Mary, with the word, Hey for St. Mary. But the Protestants command their men not to shoot upon pain of death; until some being slain by a volly of shot from the Marylanders, they defended themselves, and God confounded Capt. Stone and all his company before them; there were near double the number of prisoners, to the victors, twenty slain, many wounded, and all the place strewn with Papists beads, where they fled; but the proceedings thereof, and how the arm of the Lord was revealed, and his mighty power manifested even to admiration, together with the suc-
463 cess and the evils drawn upon themselves, appears by the relation thereof, at this time also published by a messenger from thence.

The Lord Baltemore pretends in print his entertainment in Maryland of the parliament friends thrust out of Virginia; but those very men whom he so stiles, coming thither, being promised by Captain Stone, he would decline urging the oath upon them, complain of it

to the parliament, are in answer thereunto vilified by Lord Baltemore, and publickly taxed for obscure and factious fellows, and in his later letters termed the basest of men, and unworthy of the least favor or forbearance. Such advantages doth he make on all sides, at such a distance, and in such incomposed times, that he confidently takes the liberty to aver such extreme and contrary things, which amaze other men that see them. The place, as himself confessed, had been deserted, if not peopled from Virginia. He might with more reason scruple to supplant the rights of the most considérable conjuncture of worthy men that ever undertook such an adventure as plantation out of England, which hath been the beginning and parent of all the rest.

The late King James revoked the Virginia companies patent for denying him to alter the government, for which he had fundamentally provided, to give instructions from time to time; and was the same which the last king did by his commission to Sir William Davenant, of which the Lord Baltemore speaks so much, and makes such inferences as serve his own ends. But the truth is, all that can rightly and properly be collected from thence, is onely this, (his right to the soil being in express words reserved.) If the king might dispose of the government of Maryland, why not the parliament, as they have done, and why not the Lord Protector, as he hath also done. Another of those fundamentals was, that no Papists should be tolerated to remain in Virginia, but sent away, if they would not take the oath of allegiance, and was so practiced, that the old Lord Baltemore's refusing, stayed not in Virginia; and
464 *hincil lackryma* to all those that were of the councel, who with their wives and children, have not suffered a little for it, of which onely Colonel Matthews and Colonel Claiborn remain alive. His son this Lord Baltemore, now publishes himself a recusant, and avers contrarily that the laws against Papists and recusants extend not thither, yet his patent says, no interpretation shall be admitted thereof, by which God's holy and truly Christian religion, or the allegiance due to the successors of the State of England should suffer any prejudice or diminution.

By all which surely its most evident. This country palatine, armed and coveted by him, appears disagreeable to law, and to his own patent, and as a monster unlike the rest of the dominions of the commonwealth of England, and contrary to the late platform of government under his Highness, the Lord Protector. Yet hath he omitted no means to inforce his dominion on those men, that are most unwilling to submit to him, as an absolute prince, and hereditary monarch. Neither doth that instance of the Roman commonwealth, in his printed pamphlet, hold for him; who though they permitted and continued many kingships over people that formerly had them, as is now done in Virginia among the Indians, yet he cannot show that ever they constituted Kings over the people of Rome, to govern absolutely over them, as this case pleads for. To have a negative voice, yea, and a power *ad placitum* in all things; that is before specified to the great regret of the inhabitants the op-

pression of many; and the obstruction of justice, of which Maryland hath afforded no mean examples and complaints.

But, although Virginia seeks the re-establishment of her bounds, so often assured under the great seal of England and otherwise, yet to renew any such authority as this of Maryland, or that of the company over her, she desires it not; but to be, from time to time, under such government as the state of England shall appoint.

465 Duplicate instructions for Capt. Robert Dennis, Mr. Rich. Bennet, Mr. Thomas Heg and Capt. Wm. Claiborn, appointed commissioners for the reducement of Virginia, and the inhabitants thereof, to their due obedience to the commonwealth of England.

Whereas the parliament of England, by an act, instituted an act prohibiting trade with the Barbadoes, Virginia, antego, hath committed to this council, several powers therein expressed, for the setling, reducing and governing the said islands; printed copies of which act are delivered you. In pursuance whereof, a fleet is now set forth, victualled, armed and manned, under the command and conduct of Captain Robert, to effect, by the blessing of God, the ends aforesaid. And for the management of that service, you are hereby jointly nominated and appointed commissioners; and for your better directions and proceedings therein, you are to follow these instructions following:

Such of you, as are here, to repair on board the ships, John or the Guinny *friggot*, of the states, which of them you shall think fit, and winde and weather permitting, to sail to Virginia, as Captain Robert Dennis shall appoint and direct. And upon your arrival in Virginia, you or any two or more of you (whereof Capt. Robert Dennis to be one), shall use your best endeavors, to reduce all the plantations, within the bay of *Chesopiack*, to their due obedience to the parliament and the commonwealth of England.

For which purpose, you or any two or more of you (whereof Capt. Robert Dennis to be one), have hereby power to assure pardon and indemnity to all the inhabitants of the said plantations, who shall submit unto the present government and authority, as it is estalished in this commonwealth. In which pardons you may make such limitations and exceptions, as you or any two or more of you (where Capt. Robert Dennis to be one), shall think fit.

And in case they shall not submit by fair wayes and means, you are to use all acts of hostility, that lie in your power, to enforce them. And if you shall finde the people so to stand out, as that you can by no other wayes or means, reduce them to their due obedience, you or any two or more of you (whereof Capt. Rob't Dennis to be one), have power to appoint captains and other officers, and to
466 raise forces within every of the plantations aforesaid, for the furtherance and good of the service. And such persons as shall come in unto you, and serve as soldiers, if their masters shall stand in opposition to the present government of this commonwealth,

you or any two or more of you (whereof Capt. Rob't Dennis to be one), have here the power to discharge and set free, from their masters, all such persons so serving as soldiers.

You shall cause and see all the several acts of parliament against kingship, and the house of lords, to be received and published, as also the acts for abolishing the book of common prayer, and for subscribing the engagement and all of the acts therewith delivered to you.

You or any two or more of you, shall have full power to administer oath to all the inhabitants and planters, there to be true and faithful to the commonwealth of England, as it is now established, without a king or house of lords. You, or any two or more of you (whereof Capt. Rob't Dennis be one), have power to give liberty to the inhabitants and planters who shall have taken the engagement formerly mentioned, to choose such burgesses as they shall think fit, and send to the place you shall appoint, for the better regulating and governing affairs there: provided that nothing be acted contrary to the government of the commonwealth of England and the laws established.

You shall cause all writs, warrants and other process whatsoever to be issued forth as occasion shall require, in the name of the keepers of the liberty of England, by authority of parliament.

In case of mortality or absence of Capt. Rob't Dennis, you or any two or more of you, have power to put in execution these instructions. In case of mortality or absence of Capt. Rob't Dennis, Edmund Currie; commander of the Guinny frigot, is hereby empowered to act as commissioner with you, or any two or more of you; and he is also, in the absence of Capt. Rob't Dennis, to take the charge
467 of the fleet, so far as concerns the shipping, according to the power given to Capt. Rob't Dennis.

And lastly, as we doubt not but you will use your best dilligence and care in carrying out of this affair of consequence, with which you are intrusted, and that by your good endeavors it will have a good issue, so the council will take the same into consideration, that respect may be had of your pains and *travel* therein, and of a recompense agreeable to your service, when the same shall be compleated, and work upon which you are employed shall be finished.

Signed in the name and by order of the council of state, appointed by authority of parliament.

JOHN BRADSHAW, *President.*

JNO. THURLOE,
Cler. of the Council.

Committee Navy, 31 December, 1652.

In pursuance of an order of parliament of the 31st August, 1652, whereby the 4 part of the 7 and 8 articles, agreed on at James City, for the surrendering and settling of plantation of Virginia, with certain parchments concerning Maryland, and the petition of the inhabitants of Virginia, are referred unto this committee to consider what patent is set to be granted to the said inhabitants of Virginia,

and to hear all parties, and to consider of their particular claims, and to report the same unto the parliament.

This committee, upon examination of matter of fact, and hearing both parties and their council, do find and humbly certifie: That by a patent dated the 23 day of May, in the 7th year of King James,
there was granted to divers adventurers and planters, by the
468 name of the Virginia company, all those lands, countries and
territories, situate in that part of America called Virginia, from Cape or Point Comfort, all along the seacoast to the Northward 200 miles, and from the said Cape or Point Comfort, all along the seacoast to the Southward 200 miles, all that space or land lying from the seacoast of the precinct aforesaid up into the lands throughout from sea to sea, West and Northwest, and all the islands lying within 100 miles along the coast of both seas, of the precinct aforesaid, with the soyle, &c., thereunto belonging, to hold to them and their heirs forever, under the several reservations therein mentioned.

That the said patent was afterwards, by a *quo warranto,* in the 21 of the said king's reign, repealed and made void.

That in the 8th year of the late king, upon the humble petition of the Lord Baltemore that he might have and enjoy a colony or parcel of ground in America, then uncultivated and not inhabited by any save the Indians there, was, by patent dated 20 June, 8th year, granted to the said Lord Baltemore all that parcel of land lying in the part of America from the sea on the East to the bay of Chesapeake on the West, extending from Watkins point to Delaware bay, and from Delaware bay to *Portowmack* river, and so along to Watkins point, together with the islands thereunto belonging, and by the said patent called the province of Maryland, to hold the same as in ample manner as any bishop of Durham, within the bishoprick or county palatine of Durham, in England, heretofore ever held or enjoyed; and to hold the same in free and common soccage, as of the Castle of Windsor; reserving to the king and his heirs and successors saith allegiance and dominion, and two Indian arrows yearly, with the fifth part of all gold and silver our found in and upon the said province; and also liberty for any the people of England or Ireland to fish, as in those seas, as in any ports or creeks of the said province, and to salt and cure their fish there.

That in and by the said parts power is granted to the Lord Baltemore and his heirs to make laws, by and with the council,
469 assent and approbation of the freemen of the said province,
or the major part of them, that shall concern life or member, as often as his lordship shall think fit, &c.; so as such laws be consonant with reason and not repugnant nor contrary, but as neer as possible may be agreeable to the laws of this nation.

That by the said patent, the said province separated from Virginia, but by express proviso, declared to be subject and depending upon the crown of England. And in case any doubt arise about any claim in the said patent, the same were to be decided by the courts of England.

It also appears by examination, taken by this committee, that Kentish island was before the date of the said patent part of Vir-

ginia, and planted and inhabited by Capt. Claiborne three years before the arrival of the Lord Baltemore's agents in Maryland, and that Burgesses in the assembly at Jamestown, in Virginia, for the said island, and that the Virginians had the sole possession of the bay of Chesopiack, and a free trade with the Indians.

That in the year 1633, upon the arrival of the Lord Baltemore's agents in Maryland, the Virginians were prohibited from trading with the Indians, in any part of Maryland, which formerly they had been accustomed. Whereupon several differences arose between Capt. Claiborn's men and Lord B.'s planters. And Capt. Claiborne continuing his trade a vessell, called the Longtail, was seized upon by the Marylanders, and one Lieutenant Warren (with some others whom he sent to rescue the said vessell), were killed by the Marylanders, in that attempt in Potomoke river. That the goods of Mr. Harman and others were all seized by the Lord Baltemore's agents, and at length, after three years' suffering, Capt. Claiborn was forcibly *dissesed* and dispossest of his plantation in Kentish island, and for his safety of his life, to fly into England. And ever since the Lord B. hath had possession of the said island, not suffering any of the Virginians to trade in the said bay without *ceisure* and
470 the confiscation of their goods.

It likewise appears unto this committee, upon a perusal of the several parchments mentioned, in the order of parliament; that the Lord B. hath constituted forms of oaths, and injoyned the taking thereof by all persons, as well officers as others, within the said province; and that not to the king but to himself, and that he hath issued out writs in his own name. All his commissions and processe running in this stile, (viz): we, us, and given under our hand, and greater seal of arms, in such a year of our dominions over the said province. That he hath likewise appointed an upper and lower house of assembly, and also a private council of state, which is not mentioned in the said patent. And we further find that several of the laws, made by the said Lord Baltemore, are not agreeable to the laws, statutes and customs of England, as for instance—

That the lands, sold by the said Lord Baltemore, are directed to be purchased and held by him and his heirs, only in soccady as of the manor, &c.

That the oath hereafter mentioned, must be taken by all that shall bear office, or shall inhabit, or come into the said province, upon pain of being banished, and if they return and refuse, to be subjected to such fine as his Lordship shall think fit.

The Oath of the Lieutenant or Chief Governor of the Province of Maryland.

I, A. B. doe sware I will be true and faithful to the Right Honourable Cecilius, Ld. Baron of Baltamore, the true and absolute Lord and Proprietary of this province Maryland, and his heirs, and him, and them, and his, and their rights, royall jurisdictions and seignory, all and every of them, into or over the said province and islands

thereunto belonging. Will at all times defend and maintaine, to the utmost of my power, and will never accept of nor execute any place, office or employment within the said province, any way con-
471 cerning or relating to the government of the said province, from any person or authority, but from or under the hand and seal at arms of his said Lordship as Lieutenant of the said province, and in all other offices committed to my charge by his said Lordship's commission or commissions to me, and will willing yield up the said commission and commisisons againe and all offices, powers and authorities granted, and to be granted by them, or any of them, into the hands of his said Lordship, and his heirs and assigns, or to such person or persons, as he, or they, shall appoint, whensoever he or they shall appoint me or so to doe, and shall signifie the same to me in writing under his or their hand and seal at arms. And will not presume to put into execution, or attempt to execute, any office, power or authority granted unto me by any of the said commissions, after that his Lordship, his heirs or assigns, Lords and proprietaries, of the said province, shall repeale them, or any of them, respectively, by any writing, under his or their respective hand and seat at arms, and that the said repeal be published in this province. I will doe equall right and justice to the poor and to the rich within the said province, to my best skill and judgment and power, according to the lawes and ordinances of the said province; and in default thereof, according to my conscience and best discretion, and the power granted and to be granted to me by his said Lordship's commission or commissions, I will not for fear, favor or affection, or any other cause, let, hinder or delay justice, to any, but shall truly execute the said office, and offices, respectively according to his said Lordship's commission to me, in that behalf and to the true intent and meaning thereof, and not otherwise, to the best of my understanding and judgment. I will not know of any attempt against his said Lordship's person or his rights or dominion, into or over the said province, and the people therein, but I will prevent, resist and oppose it, with the utmost of my power, and make the same known with all convenient speed to his said Lordship; and I will, in all things, from time to time, as occasion shall serve, faithfully counsel and advise his said Lordship, according to my heart and con-
472 science. And I do further sware, I will not, by myself, or any other person, directly trouble, molest or discountenance, any person whatsoever in the said province, professing to believe in Jesus Christ, and in particular no Roman Catholick, for or in respect of his or her religion, nor his or her free exercise thereof, within the said province, so as they may not be unfaithful to his said Lordship, or molest or conspire against the *civill* government established under him; nor will I make any difference of persons in conferring offices, rewards or favours, proceeding from the authority, which his Lordship hath conferred on me, as his Lieutenant here, for or in respect to their said religion, respectively, but merely as I shall find them faithful and well deserving of his said lordship, and to the best of my understanding, endowed with moral virtues and abilities, fitting for such offices, rewards or favours, wherein my prime aim and

end shall be, from time to time, sincerely the advancement of his said lordship's service here, and the publick unity and good of the province, without partiality to any, or any other sinister end whatsoever; and if any other officer, or persons whatsoever, shall, during the time of my being his said lordship's lieutenant here, without my consent or privily molest or disturb any person within the province, professing to believe in "Jesus Christ," merely for or in respect of his or her religion, or the free exercise thereof, upon notice or complaint thereof made unto me, I will apply my power and authority to relieve any person so molested or disturbed, or troubled, whereby he may have right done him for any damage which he shall suffer in that kind, and to the utmost of my power will cause all and every such person or persons as shall molest or trouble any other person or persons in that manner, to be punished. I will faithfully serve his lordship as his chancellor and the keeper of his great seal of this province, committed to my charge and custody, by this said lordship's commission to me, to the best of my skill and understanding. I will cause the impression in wax of the said seal to be affixed
473 to all such things as I have, or shall from time to time receive, commission or warrant, so doing from his said lordship, under his hand and seal at arms, and that it shall not be affixed to any other writing or thing whatsoever, directly or indirectly, with any privy consent or knowledge. I will do my best endeavor to carefully preserve the great seal in my custody, so long as it shall please his said lordship to continue me in the charge and keeping thereof, to the end that it might not be lost, stolen, or unlawfully taken from me, and thereby any other person may affix the impression thereof unto any writing or thing whatsoever, without authority for so doing lawfully derived, or to be derived from, by or under a commission or warrant under his said lordship's hand and seal at arms; and that I will truly and faithfully deliver up again the said great seal into the hands of such person or persons, as his said lordship or his heirs shall appoint, when his or their pleasure for that purpose shall be signified to me, under his or their hands and seals at arms; so help me God, and by the contents of this book.

The Oath of Fidelity to the Lord Proprietor.

I, A. B., do faithfully and truely acknowledge the right honorable Cecilius, Lord Baron of Baltamore, to be the true and absolute lord and proprietary of this province and country of Maryland and the islands thereunto belonging, and I do swear that I will bear true faith unto his lordship and his heirs, as to the true and absolute lords and proprietaries of the said province and the islands thereunto belonging; and will not at any time, by word or action, in publick or private, wittingly or willingly, to the best of my understanding, any way derogate from, but will, at all times, as occasion shall require, to the utmost of my powers, defend and maintain all such his said lordships and his heirs, right, title, interest,
474 privileges, royal jurisdiction, prerogative propriety and dominion, over and in the said province of Maryland, and the

islands thereunto belonging; and over the people who are or shall be therein, for the time being, as are granted or mentioned to be granted, to his said lordship, and to his heirs, by the king of England in his said lordship's patent of the said province, under the great seal of England. I do also swear that I will with all expedition discover to his said lordship or his lieutenant, or other chief governor of the said province for the time being, and also use my best endeavors to prevent any plot, conspiracy or combination which I shall know, or have cause to suspect, is intended or shall be intended against the person of his lordship, or which shall tend any ways to the *disinherison* or deprivation of his said lordship or his heirs, the right, title, royal jurisdiction or dominion aforesaid, or any part thereof; and I do swear that I will not either by myself, or by any other person or persons, directly or indirectly, take, accept, receive, purchase, or possess, any lands, tenements, or *hereditant*, within the said province of Maryland or the islands thereunto belonging, from any Indian or Indians, to any other use or uses, but to the use of his said lordship, and his heirs, or knowingly from any other person or persons, not deriving a legall title thereunto, from or under some grant, from his said lordship, or his said heirs, legally passed under his or their great seal of the said province for the time being; so help me God, and by the contents of this book.

The Oath of a Counsellor of State in Maryland.

I, A. B., do swear that I will be true and faithful to the Right *Honourable* Cecelius, Lord Baron of *Baltamore*, the true and absolute lord proprietary of this province of Maryland, and his heirs, and him, and them, and his and their rights, royal jurisdictions, and seignory, and every of them into and over the said
475 province and islands, hereunto belonging. I will at all times defend and maintain, to the utmost of my power, and will never accept of, nor execute, any place, office, or *imployment*, within the said province, any way concerning or relating to the government, from time to time, but from his said lordship, or his heirs, lords and proprietaries, of the said province, under his or their hands and seals at arms. The peace and *welfare* of the people of this province, I will ever procure as far as I can; I will aid and assist the administering and execution of justice in all things in my power; to none will I delay or deny right for fear, favor or affection; I will do my best skill, according to my heart and conscience, give good and faithful council to the said lord and proprietary and his heirs, and to his and their lieutenant and chief governor of this province, for the time being, when thereunto I shall be called; I will keep secret all matters committed or revealed unto me, or which shall be moved or debated, secretly in council, and faithfully declare my mind and opinion therein, according to my heart and conscience, and if any of the said treaties and council, shall touch any of the privy counsellors of this province; I will not reveal the same to him so touched or concerned, but will keep the same secret, until such time as by the consent of the lord proprietary or chief governor, here

for the time being, publication shall be made thereof; I will, as a counsellor, a justice and commissioner for conservation of the peace of this province, do equal right unto the poor and to the rich, to the best of my understanding and judgment, according to the laws, from time to time in force, within this province, and in default thereof according to my best discretion; and generally in all things will do as a faithful counsellor, to the lord proprietary; and I do further swear, I will do myself, or any other person, directly or indirectly, trouble, molest, or discountenance any person or persons in the said province, professing to believe in "Jesus Christ," and in particular no Roman Catholick, for or in respect of his or their
476 religion, nor in his or her free exercise thereof, within the said province, so as they be not unfaithful to his said lordship, nor molest or conspire against the civil government, established under him. So help me God, and the contents of this book.

That whoever shall call any one an idolater, Popish priest, Jesuite, Jesuited Papist, &c., to forfeit ten pounds; and that no Papist shall be troubled for exercise of his religion, so as they be faithful to his lordship.

Whosoever shall be accessary to the running away of an apprentice, shall suffer death; but the party himself, if apprehended, to serve his time double.

Whosoever shall counterfeit his lordship's seal or sign manual, shall suffer the loss of his hand, imprisonment during life, or pains of death, or confiscation of lands, or estates, or any one or more of them, as the governor and chancellor, and council shall think fit.

His lordship suffers Dutch, French or Italian descents to plant and enjoy such equal priviledges with the British and Irish nations.

And lastly, in one of his laws, he mentions "the high and mighty Prince Charles, the first of that name;" and in another expresseth, "that none shall transport any *tobacco's* in any Dutch vessel, bound for any other port than his majestie's."

Unto all which exceptions answer having been made by the Lord Baltamore, which is hereunto annexed; the same is humbly submitted to the judgment and further direction of this honorable house.

It hath been confessed, by the Lord Baltimore, that one Capt. Green, his lieutenant-governor of Maryland, did soon after the death of the late king, proclaim his son, Charles Stewart, king of England, &c., for which his lordship saith, he did by a writing, under his hand and seal, (which is one of the parchments remaining with this committee), revoke the commission granted to the said
477 Capt. Green, and appoint one Stone, in his room, but there is no such cause mentioned in the said writing.

It likewise appears that in March, 1651, the governor and council of Maryland, being required by the commissioners, that were sent thither, to issue forth writs in the name of the keepers of the libertie of England; they refused the same, saying: they could not do it without breach of their trust and oath.

To the Honorable Richard Bennet, and Col. William Claiborn, Esquires, Commissioners of the Commonwealth of England for Virginia and Maryland:

The humble petition of the commissioners and inhabitants of Severne, alias Ann Arundel county:

Sheweth, that whereas we were invited and encouraged by Capt. Stone, the Lord Baltimore's governor of Maryland, to remove ourselves and estates into this province, with promise of enjoying the liberty of our consciences, in matter of religion, and all other priviledges of English subjects; and your petitioners did, upon this ground, with great cost, labor and danger, remove ourselves, and have been at great charges in building and clearing. Now, the Lord Baltimore imposeth an oath upon us, by proclamation, which he requireth his lieutenant, forthwith to publish, which if we do not take, within three months after publication, all our lands are to be seized for his lordship's use. This oath we conceive not agreeable to the terms on which we came hither, nor to the liberty of our consciences as Christians, and free subjects of the commonwealth of England. Neither can we be persuaded in our consciences, by any light of God, or engagement upon us, to take such an oath, but rather humbly conceive it to be a very real grievance, and such an oppression as we are not able to bear. Neither do we see, by what lawful power, such an oath, with such extreme penalties can by his lordship be exacted of us, who are free subjects of the commonwealth of England, and have taken the engagement to them.

478 We have complained of this grievance to the late honorable council of state, in a petition, subscribed by us, which never received any answer, such as might clear the lawfulness of such, his proceedings with us, but an aspersion cast upon us, of being factious fellows. Neither have we received any conviction of our error, in not taking the said oath, nor order, by that power before whom our petition is still *depending*, to take it hereafter. Neither can we believe that the commonwealth of England will ever expose us, to such a manifest and real bondage (who assert themselves the maintainers of the lawful liberties of the subjects), as to make us swear absolute subjection to a government where the ministers of state are bound by oath, to countenance and defend the Roman Popish religion, which we apprehend to be contrary to the fundamental laws of England, the covenant taken in the three kingdoms, and the consciences of true English subjects, and doth carry on an arbitrary power, so as whatever is done by the people, at great costs, in assemblies, for the good of the people, is liable to be made null by the negative voice of his lordship. But affirmative propositions and commands are incessantly urged and *prest*, and must not be denied.

In consideration whereof, we humbly tender our condition and distraction upon this occasion, falling upon the hearts of all the people, to your view and consideration, in treating your honors to relieve us according to the cause and power wherewith you are intrusted by the commonwealth of England; rather because upon such an exigent as this we have none to *flie* to but yourselves, the honorable commissioners of the commonwealth of England, not

doubting but God will direct you into what his hand and will is in this matter concerning us, and that you will faithfully apply yourselves to our redress in what is just and our lawful liberty. Which is the prayer of your poor petitioners.

Swan River, the 30th of Jan'y, 1653.

Subscribed by Edw'd Lloyd and 77 persons of the housekeepers and freemen, inhabitants.

479 To the Honorable Richard Bennett and William Claiborn, Esquired, Commissioners for the Commonwealth of England within the Bay of Chesapick:

The humble petition of the inhabitants of the Northside of Patuxent river, in the province of Maryland:

That being reduced by your honors from that tyrannical power exercised over the people of this province by the Lord Baltimore and his agents unto the obedience of the commonwealth of England, to which government we have subjected and engaged, and have by your honors been often enjoyned real conformity and obedience to the same, and not to own any other power and authority, as we will answer the contrary: In subjection whereunto we have had peace and freedom hitherto, which with all thankfulness we cannot but acknowledge, and in our continued obedience do expect from the parliament, next under God, continued peace, liberty and protection from the pride, rage and insolency of their and our adversaries.

Now so it is, may it please your honors, that of late the Lord Baltimore doth, by his orders and agents, seek to set over us the old form of government formerly exercised by him in this province, which we did conceive, by the blessing of God, upon your honors' endeavors, had been fully made null and void. Yet notwithstanding, by the arbitrariness of his own will, he appoints laws for us, and sets up Popish officers over us, ousting those officers of justice appointed by you; issuing forth writs in his own name, contrary to your honors' order and appointment; and doth by proclamation, under his own hand and in his own name, impose an oath, which if refused by us, after three months, all our lands and plantations are to be seized upon to his lordship's use, and if taken by us we shall be engaged at his will to fight his battles, defend and maintain him in his patent as it was granted to him by the late king, &c., is†

which oath we humbly conceive *us* contrary to the liberty and freedom of our consciences as Christians, and contrary to the
480 fundamental laws of England; contrary to the engagement we have taken in subjection to the commonwealth of England, and unsuitable to freemen to own any other power than that to which we belong, and to whom we are and have engaged; and contrary to the Word of God to fight for and defend and maintain Popery and Popish anti-christian government; which we dare not do, unless we should be found traitors to our country, fighters against God and covenant breakers.

[† In pencil in copy.]

The premises considered, we humbly spread our condition before your view and consideration, hoping, that as you are commissioners for the commonwealth of England, and that power, which God hath put into your hands, that you will up and be doing, in the name and power of our God, that we be not left, for our faithfulness, as a prey to ungodly and unreasonable men, before we can make our complaint and grievance known to the supreme authority of England; which with all readiness we shall endeavor to do by the first opportunity; and from whom we do hope, and shall expect, by God's blessing, to have a gracious answer and suitable redress. And your petitioners hereunto subscribed shall pray, &c.

Subscribed:

RICHARD PRESTON,
and 60 more of the House-keepers and Freemen.

Dated in Patuxent river, and in the Province of Maryland, the first of March, 1653.

An Answer to the Petitions Lately Received from the Inhabitants of the Rivers Severn and Patuxent.

GENTLEMEN: We have lately received from you a petition and complaint against the Lord Baltimore, his governor and officers there, who upon pretence of some uncertain papers and *relations* to be sent out of England, but no way certified or authenticated, have presumed to recede from the obedience to the common-
481 wealth of England, to which they were reduced by the parliament commissioners; to the contrary whereof, nothing hath been sent out of England, as far as is yet made appear unto us. But duplicates and confirmations of the commissioners powers and actions were sent from the parliament since the reduction of Virginia and Maryland. Now whereas, you complain of real grievances and oppressions, as also of an imposition of an oath upon you against the liberty of your consciences which you say you cannot take as Christians or as free subjects of the commonwealth of England. We have thought good to send you this answer. That because we, nor you, have as yet received, or seen, sufficient order or directions from the parliament and State of England, contrary to the form to which you were reduced and established by the parliament's said commissioners. Therefore we advise and require you, that in no case you depart from the same; but that you continue in your due obedience to the commonwealth of England, in such manner as you and they were then appointed and engaged. And not to be drawn aside from the same upon any pretence of such uncertain relations as we hear are divulged among you. To which we expect your real conformity, as you will answer the contrary, notwithstanding any pretense of power from Lord Baltimore's agents, or any other, whatsoever to the contrary.

Your very loving friends,

RICHARD BENNET.
WM. CLAIBORN.

Virginia, March the 12, 1654.

A Declaration Published in Maryland.

It cannot be unknown to the inhabitants of Maryland, that about two years since, this province was reduced and settled, under the obedience to the commonwealth of England, by the parliament's commissioners sent thither, with special commission and instructions, to that purpose; and that Capt. Wm. Stone, Mr. Thomas Hatton, and others, re-assuming the power and place of governor and council here, undertook and promised to continue, in their
482 said obedience, and to issue out all writs, process and proceedings, in the name of the keepers of the liberty of England, as was commanded by the said instructions by which Maryland was reduced, which said commission and instructions have since been renewed, and the proceedings of the said commissioners, owned by the committee of the Council of State, as by their order and report drawn up for the parliament may appear, wherein the Lord Baltimore's agents are taxed for refusing to issue out writs in the name of the keepers of the liberty of England, notwithstanding all which appearing so clear and evident. The said Capt. Stone and Mr. Hatton, though they continued and exercised the government for some time, and for divers courts, in the name of the keepers of the liberty of England, yet they have since, upon no good ground, falsified their said trust and engagement, though acted publically and after long advice and consideration; and having rejected and cast off their said obedience to the commonwealth of England, have further refused to govern this province according to the laws of England, but declare and affirm a power and practice contrary thereunto and contrary to the late platform of government of the commonwealth of England, Scotland, and Ireland, and the dominion thereof; as namely, by the governor's negative voice in assemblies, and his choosing and removing counsellors at pleasure, and the like is manifest. And, whereas, we have lately received commands from his highness the lord protector, to publish the said platform of government, and that all writs and proceedings should be issued in the name of his highness, to which though we desire this government should be conformable, yet the said Capt. Stone and Mr. Hatton, having lately associated unto them divers counsellors, all of the Romanish religion, and excluding others appointed by the parliament's commissioners, have and do refuse to be obedient to the constitutions thereof, and to the lord protector therein; and have in the name and by special direction of the said Lord Baltimore, made proclamation and exacted an oath of fidelity from all the inhabitants of the province, contrary and inconsistent to the said
483 platform of government; which said oath, nevertheless, and the law here commanding the same, and many other laws, are likewise by the report of the said committee of the council of state declared to be contrary to the laws and statutes of the English nation, which is an express breach of his patent. And, whereas, the said oath in many particulars is *distasted* by all the inhabitants of Maryland, and especially out of tenderness and conscience by all

Northern plantations of Patuxent and Severn, who having lately engaged to the parliament of England, do say and declare they cannot take the said oath to the Lord Baltimore to be absolute lord and proprietor of Maryland, and to the utmost of their power to defend and maintain all his rights and royal jurisdictions, perrogatives, dominions, &c. Upon which, their refusal of the said oath, the said Capt. Stone, by the said Lord Baltimore's especial direction, hath set forth a proclamation, declaring: That all such persons, so refusing, shall be forever debarred from any right or claim to the lands they now enjoy and live on: and that the said Capt. Stone, as his lordship's governor, is thereby required to cause the said land to be entred and seized upon to his lordship's use.

By which strange and exhorbant proceedings many great cruelties and mischiefs are likely to be committed, and many hundreds, with their wives and families are utterly ruined, as hath been formerly done here and at Kent, though planted before the Lord Baltimore's claim to Maryland, with many murders and illegal executions of men, confiscation of estates and goods, and great miseries sustained by women and orphans. In consideration and just fear whereof, the said planters of Patuxent and Severn have made their often addresses to us, as some of the then commissioners for the reducement of Maryland; and most lamentably complain of the great danger they stand in of being utterly undone, and chiefly for engaging their *fidelitie* to the commonwealth and parliament of England, now devolved to his highness, the lord protector, their obedience and
484 faith to both, being plainly repugnant to each other and inconsistent.

We therefore, the commissioners of the parliament, having written and proposed to the said Captain Stone and that council, for a meeting to procure a right understanding in the matters aforesaid, and to prevent the great inconveniences likely to ensue. In answer thereunto, though they acknowledge our lines peaceable, yet so exulcerated are their minds, that in the very next line they add, we in plain terms say we suppose you to be wolves in sheep's clothing, with many other following like uncivil and uncomely words and expressions.

In contemplation therefore of all the premises we have thought fit to make publication hereof, and to justify and manifest our proceedings in these affairs, lest many people may be ensnared by false and cunning suggestions and pretences as lately hath been practiced herein, the *falsitie* whereof time hath sufficiently demonstrated; and we are ready to give further satisfaction for the truth of any of the particulars before alleged, if any shall desire it, or repair to us to that purpose which they may securely do.

Wherefore we advise, and in the name of his highness the lord protector, require all the inhabitants of this province to take notice of the premises, and to contain and keep themselves in their due obedience under his highness the lord protector of England, Scotland and Ireland, and the dominions thereto belonging, of which this is undoubtedly a part and ought to be governed accordingly, whereby they may assure themselves of the peaceable enjoyment

of their liberties, profession of their religion, and their estates, and that they shall be protected from wrong and violence in what kind soever.

Hereby also protesting against the said Captain William Stone, Mr. Thomas Hatton, and all others any way confederate or assistant with them in their unlawful practices, that they may be accountable and answerable to God and the state of England, under
485 his highness the lord protector, for all the mischiefs, damages, losses and disorders that may or shall happen thereby.

RICHARD BENNET.
WILL. CLAIBORNE.

Dated at Patuxet in Maryland, the 15th of July, 1654.

Captain William Stone's Resignation of the Government.

Whereas, since the orders or directions of the commissioners of the state of England for the government of this province of Maryland of the 28th of June, 1652, I, William Stone, Esq., governor of the said province, was enjoyned by the direction and appointment of the right honorable the Lord Baltimore, lord proprietary of the said province, to issue out all writs and processes within this province, in this the said lord proprietarie's name, and to admit of those of the council which were appointed by his lordship, and no other. And whereas, upon my compliance with his lord-ship's commands therein, not any wayes contradictory, so far as I understand, to any command of *supream* authority in England. The said commissioners in pursuance of their declarations lately here published, have threatened and gone about, by force of arms, to compel me to decline his, the said lord proprietarie's directions and commands before mentioned; which, in regard to the trust reposed in me by his said lordship, as governor here under him, I conceive I was engaged not to do. I have therefore thought for for prevention of the effusion of blood of the country and inhabitants by an hostile contest upon this occasion, to lay down my power of governor of this province, under his lordship; and do promise for the future to submit to such government as shall be set over us by the said commissioners in the name and under the authority of his highness the lord protector.

Witness, my hand the 20th of July, 1654.

WILLIAM STONE.

486 In presence of—
THOMAS GERRARD.
THOMAS HATTON.
EDW. SCARBURG.

Order for Settling the Government of Maryland.

Whereas, by several orders drawn up and published at St. Marie's, the 29th of March, and the 28th June, 1652, Maryland was reduced and settled under the authority and obedience of the commonwealth

of England, as to the government thereof by special order and command of the council of state by commission from the parliament, and was left in the hands of Captain William Stone, Mr. Hatton, and others, who were required and promised to issue out writs and other process in the name of the keepers of the liberty of England, according to the express words of the commission and instructions for reducing, settling and governing of all the plantations in the bay of Chesapiak to the obedience of the commonwealth of England, as in and by the aforesaid orders and proclamation may and doth appear. And whereas the aforesaid Captain Stone, by special order and directions from the Lord *Baltamore*, as it appeareth, was *perswaded* and induced to go away from the obligation and the trust reposed in him, by issuing forth writs and all other process in the name of the lord proprietary of this province, placing and displacing those of the council, and imposing an oath upon the inhabitants contrary unto and inconsistent with the said engagement and oath to the commonwealth of England, upon the penalty and forfeiture of the lands of all such as should refuse to take the same within three months after publication thereof, which were then to be entered upon and seized to his lord-hip's use; thereby occasioning great discontent and disturbance among the inhabitants, besides the irregularity and cruelty of the said proceedings, and the opposition,
487 contempt and rebellion therein to the commonwealth of England and his highness the lord protector. And further, whereas by a late proclamation dated the 4th of this month, published in this province, both the commissioners of state and the people who adhered to this engagement to the commonwealth of England and refused to own or acknowledge any other name or authority as to government, or to take any other oath but what they had already taken to that power, were charged; that they drew away the people and led them into faction, sedition and rebellion against the Lord Baltimore; wereby not only the lands and plantations of many hundreds of people, but also their estates and lives were liable to be taken away at the pleasure of the aforesaid Lord Baltimore and his officers. By all which unjust and unreasonable proceedings the people were put upon the necessity of standing upon their own defence for the vindication of their just rights and liberties and freeing themselves from those great oppressions, whereby the whole province was very much threatened and apparently endangered. For the prevention whereof, and also for the relief of those who were so deeply distressed, and for the settlement of the province in peace and in their due obedience under his highness, the said commissioners, by authority derived unto them from his highness, the lord protector, applyed themselves unto Capt. William Stone, the governor and the council of Maryland, according to a declaration of the 15th of this month, herewith published, who, returning only opprobrious and uncivil language, presently mustered his whole power of men and soldiers in arms, intending to surprise the said commissioners, and, as could be imagined, to destroy all those that had refused the said unlawful oath and only kept themselves in their due obedience to the commonwealth of England, under which they were reduced and set-

tled by the parliament's authority and commission as aforesaid. Then the said commissioners, in peaceable and quiet manner, with some of the people of Patuxent and Severn, went over the river of Patuxent, and there at length received a message from Capt. Stone that the next day they would meet and treat in the woods.

488 And thereupon, being in some fear of a party to come from Virginia, he condescended to lay down his power, lately assumed from the Lord Baltimore, and to submit (as he had once before done) to such government as the commissioners should appoint under his highness the lord protector.

It is therefore ordered and declared by the said commissioners: That for consideration of the peace and public administration of justice within the said province of Maryland, Captain William Fuller, Mr. Richard Preston, Mr. William Durand, Mr. Edw'd Lloyd, Capt. John Smith, Mr. Leonard Strong, Mr. —— Lawson, Mr. John Hatch, Mr. Richard Wells, and Mr. Richard Ewen, or any four of them, whereof Captain William Fuller, Mr. Richard Preston, or Mr. William Durand, to be always one, to be commissioners for the well ordering, directing and governing the affairs of Maryland, under his highness the lord protector of England, Scotland and Ireland, and the dominions thereof, and in his name only and no other; and to proceed therein as they shall see cause, and as neer as may be according to the laws of England, to appoint and hold courts for the due administration of justice and right, in such places and at such time as they shall think fit and necessary. And any of the commissioners of the quorum to issue forth writs, warrants, subpœnas, &c., as also that they summon an assembly to begin on the 20th day of October next. For which assembly all such shall be disabled to give any vote, or to be elected members thereof, as have born arms in war against the parliament or do profess the Roman Catholick religion. And the said Mr. William Durand is hereby appointed to be secretary to the said commissioners and to receive the records from Mr. Thomas Hatton, and Capt. John Smith to be sheriff for the ensuing year.

Dated at Patuxent, in the province of Maryland, the 22d of July, 1654.

RICHARD BENNET.
WILLIAM CLAIBORNE.

489 Cecelius, Lord Baltimore, to all to whom these presents come, Greeting:

Whereas, our *soverign* lord, the king, by his highness commission under the great seal of England, bearing date at Oxford, the 28 day of February, now last past, hath authorized Leonard Calvert, Esquire, brother of me, the said Lord Baltimore, to treat, conclude and agree, and which the general assembly of the colony of Virginia, for and concerning the ascertaining and establishing by act of general assembly there, of customs and duties, to be paid to his Majesty, his heirs and successors in Virginia, upon exportation of tobacco and other goods and merchandizes from thence, and upon all other goods and merchandizes brought in and imported there,

other than for necessary supply for clothing imported, as by the said commission more at large appeareth. And whereas, by a contract or agreement in writing, bearing date the day of the date of the said commission, made between our *soverign* lord, the king, of the one party, and me, the said Lord Baltimore, on the other party, reciting the said commission hereinbefore recited, our said *soverign* lord, the king, for the considerations in the said contract or agreement expressed, is pleased and hath agreed with me, the said Lord Baltimore, that in case a certainty of customs and duties shall be established by act of general assembly of the said colony of Virginia, according to the tenor of the said commission. That then his said majesty will make a lease, or grant to me, and such others as I shall desire to be joyned with me, of the same customs and duties which shall be established as aforesaid, for such term, and under such rents and covenants as in the same contract or agreement are expressed. And that immediately after the establishing of the said customs and duties as aforesaid, and until such lease or grant shall be made as aforesaid. I, the said Lord Baltimore, and such as I shall appoint, shall be the receiver, or receivers, collector or collectors, of all such customs and duties as shall be established as aforesaid, to the proper use of the said Lord Baltimore, my executors, administrators and assigns, without acompt, paying certain rents, salaries and
490 entertainments, in the said contract or agreement expressed and mentioned. And his majesty hath, by the said contract or agreement, constituted and ordained me, the said Lord Baltimore, and my deputy of deputies, to be appointed by me, to be his collector and receiver of all customs and duties which shall become due and payable to his majesty as aforesaid as by that part of the said contract or agreement which is remaining with me, the said Lord Baltimore, being under the great seal of England, more at large appeareth. Know ye now, that I, the said Lord Baltimore, for divers good causes and considerations me thereunto moving, have substituted, ordained, made and appointed, and by these presents, do substitute, ordain, make and appoint —— ——, to be my deputy, in —— this behalf, and do by force and vertue of the same contract or agreement, authorize and put the said —— —— in my place and stead, and to the use of me, my heirs, executors, administrators and assigns, to receive, collect and gather all such customs and duties whatsoever as in pursuance of the before recited commission and contract or agreement, shall be established, to be paid to his majesty, his heirs and successors in Virginia aforesaid, by act of general assembly of the said colony, and out of the same to pay and discharge all such rents, salaries and entertainments, as by the said contract or agreement are mentioned to be by me paid and discharged; rendering to me, my executors, administrators and assigns, the overplus or remainder of the same customs and duties; giving and hereby granting unto the said —— —— as full power and authority to recover and receive the said customs and duties, to be established as aforesaid, when the same shall grow due. And to give acquittances and receipts for the same, and to substitute and appoint one or more person or persons

under him in this behalf, and the same to revoke at his will and pleasure and to pay and discharge the said salaries and entertainments, as I myself have or may or might claim to have by force and virtue of the said contract or agreement; and further to do,
491 execute and finish all and every such further and other acts and things which shall be expedient and necessary to be done by the said —— ——, touching the premises, by reason of his being my deputy as aforesaid, as effectually as I might do the same, being personally present. Ratifying, confirming and allowing all and whatsoever the said —— —— shall do or cause to be done in the premises in pursuance hereof.

In witness whereof, I, the said Lord Baltimore, have hereunto put my hand and seal at Arms, the tenth day of April, 1644—Anno Regis. Carols. Angl., &c., Vicessimo.

C. BALTEMORE.

Finis.

No. 94, Vol. 61-96.

AT THE COURT AT WHITEHALL, *November* 19, 1675.

Present: The king's most excellent maj'te in council.

Whereas, the ri't hon'ble ye lords of the committee for foreign plantations, did this day present to his maj'tie in council, a report touching a grant to be past unto his maj'te subjects of Virginia, in the words following:

May it please yo'r maj'te, the petition of Francis Moupon, Thomas Ludwell and Robert Smith, agents for the governor council and bugesses of ye county of Virginia and territory of Accomack, being by yo'r maj'te's gracious order in council of the 23d of June last past, referred unto yo'r maj'te's attorney and solicitor generall, who were to consider thereof, as also of a paper annexed, containing more fully the heads of what they humbly proposed, and then to report unto us their opinion on the same as to ye conveniency thereof in respect of yo'r maj'te's service. And wee having seen and examined the said report bearing date ye 12th instant, are upon the
492 whole matter humbly of opinion that it will not onely be for yo'r maj'te's service, but for ye encrease of ye trade and growth of ye plantations of Virginia, if yo'r maj'te shall be pleased to grant and confirm under yo'r great seale of England unto yo'r subjects of Virginia the particulars following, as of yo'r maj'te's free grace and goodness to them:

1. That yo'r maj'te will enable ye governor, councill and comonalty of Virginia to purchase the lands, &c., contained in the grant to the earle of St. Albans, Lord Culpeper, and others, and as to that purpose onely, to be made a corporation to purchase and retain the same with a non obstante to ye statute of mortmaine.

2. That ye inhabitants yo'r maj'te's subjects there may have their immediate dependance upon ye crowne of England under ye jurisdiction and rule of such governor as yo'r maj'te, yo'r heires and successors shall appoint.

3. That ye governor for ye tyme being shall be resident in ye country, except ye maj'ie, ye hieres and successors shall at any time command his attendance in England, or elsewhere, in w'ch case a deputy shall be chosen to continue during the absence of such governor, in manner as hath bin used, unless le maj'te shall please to nominate the deputy, who is to be one of ye councill. But if any governor happen to dye, then another to be chosen as hath bin formerly used, to continue till yo'r maj'te, yo'r heires and successors shall appoint a new governor.

4. That no manner of impositions or taxes shall be laid upon or imposed upon ye inhabitants and proprietors there, but by the common consent of ye governor, councill and burgesses, as hath bin heretofore used: provided, that this concession be no barr to any imposition that may be laid by act of parliament here on the *comodities* w'ch come from that country.

5. That yo'r maj'te, yo'r heires, and successors, will not for the future grant any lands in Virginia, under yo'r great seale,
493 without first being informed by ye governor and council there for the tyme being, or some person by them impowered, whether such grant will not be prejudiciall to plantations there.

6. That all lands now possessed by the planters or inhabitants may be confirmed and established to them: provided, it alter not the property of any particular man's interest in any lands there.

7. That for ye encouragement of such of yo'r maj'te's subjects as shall from tyme to tyme go to dwell in ye said plantations, there shall be assigned out of ye lands (not already appropriated) to every person so coming thither to dwell, fifty acres, according as hath bin used and allowed since the first plantation.

8. That all lands possessed by any subject inhabitating in Virginia w'ch have escheated or shall escheat to yo'r maj'te, may be enjoyed by such inhabitant or possessor, he paying two pounds of tobacco composition for every acre, w'ch is the rate in that behalf set by ye governor authorized to do the same by yo'r maj'te's instructions.

9. That ye governor and councill, or a certain quorum of them, may be impowered to try all treasons, murthers, felonies, and other misdemenors, *provided* they proceed in such trials as neer as may be to the lawes of England; the governor to have power of pardoning all crimes unlesse murther and treason, and in these, if he see occasion, to give reprieve until he shall have laid the state of the facts before yo'r maj'te, and received yo'r royal determination therein.

10. That the power and authority of the grand assembly, consisting of a governor, councell and burgesses, may be by yo'r maj'te ratified and confirmed: provided that yo'r maj'te may at yo'r pleasure revoke any law made by them, and that no law so revoked shall, after such revocation and intimation thereof, from hence be further used or observed.

All w'ch is humbly submitted to yo'r maj'tes determination.

494 COUNCILL CHAMBER, 19*th October*, 1675.

His maj'te having considered ye s'd report, and being graciously inclined to favor his s'd subjects of Virginia, and to give y'm all due encouragem't, hath thought fit to approve and confirm ye same. And Mr. Attorney Generall or Mr. Solicitor Generall is hereby required to prepare a bill for his maj'te's signature in order to ye passing of letters patents for ye grant, settlement and confirmation of all things according to ye direction of the said report, but varying ye words and manner of expression so as may be most suitable to ye formes of law in such cases accustomed and to ye pet'rs relief.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

No. 80.

State Papers, Colonial Virginia, Vol. 59, No. 19, August 3, 1663.

Charles R., trusty and well beloved: We greet you well. Whereas for many good services and other weighty considerations, wee did in the first year of our reigne, by our letters pattent, under the greate seale of England, (since enrolled in our court of chancery,) give and grant unto our rt. trusty and well-beloved Henry, Lord Jermine, now Earl of St. Albans, Ralph Lord Hopton, John Lord Berkeley, Baron of Stratton, Sir William Morton, Knt., one of our sergeants at law, and others, all that tract, territory or portion of land in America, bounded by and within the heads of Tappahannocke als. Rappahannock and Querrough or Potomack rivers, the courses of these rivers and Chesopacka baye, together with the rivers themselves, and all the islands within the banks of the s'd rivers, as in and by the s'd letters pattents doth or may more at large appeare, which by
495 reason of the late unhappy and unsettled times they could not plant or enjoy, according to our royall intention. And whereas the said Earl of St. Albans, Ld. Berkeley, Sr. William Morton, and our servant, John Fretheroy, assignee of the s'd Lord Hopton (being the serviving pattentees and parties interested,) have lately, since our restoration to our rights and governm't, granted and demised to our trusty and well-beloved Sir Humfry Hooke, Knt., Lord Fitzherbert, Esq're, and Robert Vicarridge, merchant, the s'd tract or territory, for a certaine number of yeares. To the intent the same may be planted and the Christian faith there propagated, and that our said pattentees, and their leassees and agents, may be by you and our councell of Virginia, protected and incouraged without any intention of withdrawing the s'd plantation from under your protection. Wee have already signified unto you by our l't'rs, under our signe manuall, bearing date at Whitehall, ye 5th day of Dec'ber last, past, our will and pleasure, that from time to time you should be ayding and assisting to such persons as should

bee employed by our s'd patentees and parties interested, or their s'd leassees, or any of them, for settling of the s'd plantation, and receiving the rents, issues and profits thereof, may enjoy the benefit intended to them by our s'd l't'rs patents. And whereas wee are induced to believe that our s'd l't'rs under our signe manuall have miscarried, and not come to your handes, for that (as wee are informed) you have lately obstructed the proceedings upon our s'd l't'rs pattents, and have not permitted the persons employed by the s'd leassees, to act in pursuance or according to the tenor thereof. And forasmuch as the same were granted to persons of honour and meritt. And for that their survivors and assignee have by their lease, as afores'd, impowered our trusty and well-beloved Sr. Humfry Hooke, Knt., and other persons of good worth, interest and quality, who in all probability, (if not interrupted,) will in a short time settle that plantation for the advantage of trade and *comerce,*
496 and to ye satisfaction of all the familyes that are there already planted. And will likewise cause townes to bee built, and courts to be erected, according to our s'd l't'res patent, for the ease and benefit of the inhabitants, and doe w'soever in reason may promote our service and the good and wellfar of our subjects in those parts. (The generality of our city of Bristol being, as we are informed, engaged w'th the s'd leassees in yt designe. Wee have therefore thought fit hereby to let you know that it is our royall will and pleasure, that you not only forbeare to give any further interruption, but also upon sight hereof, restore our s'd l'tres patents unto the person or persons employed by the s'd Sr. Humfry Hooke and the other leassees, (being informed that you detaine the same.) And likewise that you assist and protect them from time to time in carrying on that work. And that you give such encouragement to them and their agents as may bee for the advancement of the s'd colony, and answer our expectation therein. Wee desiring nothing more then what may conduce to the good of our people inhabiting in the s'd colony, w'ch wee conceive will bee much furthered by that course that our s'd patentees have taken for the settling of the s'd *plantation* in the s'd territory. And herein wee expect yo'r obedience to our comands. Neither wee intending, nor our s'd patentees desiring to w'thdraw the s'd colony from under your governm't or appeale. And soe wee bid you farewell. Given at our court at Whitehall, ye 3rd day of August, 1663, in ye 15th yeare of our reigne.

By his Ma'ties comand.

HENRY BENNET.

Our trusty and wellbeloved the governor and councell of our plantation of Virginia.

Inforcem't of a former L'tre to ye Governor of Virginia.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH.
Record Agent.

June 27th, 1871.

497 A copy of my field notes for the survey of Rapp river from Meratico creek to Charles's Beaver Dam to the latitude of 30° 19′ N.

Surveyed by

THO. BARBER,
Surveyor of Richmond County.

MONDAY, *ye 30th of May*, 1737.

Began at ye mouth of Meratico creek, observation over the creek is S. 74° E. to 0 N. 38°, E. 52 per.; thence S. 58° E. to ye 0, distance across ye river is S. 75°, W. to 0 N. 20°, W. along ye river shore 280 per.; then S. 50°, W. to ye 0; thence along ye river N. 52°, W. 74 per., N. 78°, W. 128 per. to Capt. Griffin's landing, N. 49°, W. 48 per., N. 34°, W. 80 per., N. 25°, W. 66 per., N. 18°, W. 70 per. to ye mouth of Farnham creek, distance across N. 56°, W. to 0 N. 7°, E. 32 per., N. 77°, W. to 0 on ye west side the creek; thence S. 74°, W. 232 per.; N. 72°, W. 60 per.; No. 54°, W. 190 per. to Mr. Peachey's creek, N. 31°, W. 120 per. to Mr. Tho. Plummer's landing, N. 40°, W. 144 per. to Jackman's creek; thence N. 68°, W. 140 per. Mr. Suggett's bar, distance is S. 52°, W. to 0 N. 14°, W. 224 per. S. 32°, W. to 0 N. 14°, W. 6 per. N. 31°, W. 92 per.; N. 58° W. 158 per. to Naylor's now Breastindines' point; thence N. 5°, E. 154 per.; N. 28°, E. 32 per. to ye mouth of Richardson's creek, distance across N. 16°, W. to 0; thence N. 66, E. 30 per.; N. 34°, W. to 0; thence N. 45° W. 108 per. to ye mouth of Totuskey creek, distance across is N. 6, W. to 0; thence N. 46, E. 10 per.; then N. 36, W. to 0, N. 75° W. 174 per.; N. 64°, W. 44 per.; N. 87°, W. 126 per. to Accotink point, distance over ye river is S. 35°, W. to 0; thence S. 87°, E. 126 per.; thence S. 48° to 0; thence N. 25°, E. 8 per. N. 1°, E. 84 per. to a small creek by Capt. Toulin's; N. 1°, E. 46 per.; No. 13°, E. 68 per.; N. 4°, W. 120 per., N. 37°, W. 188 per., N. 21°, W. 58 per., N. 34°, W. 228 per. to Rust's
498 creek, distance over ye river is S. 35°, W. to 0 N. 52°, W. 238 per.; thence S. 7°, W. to 0 N. 32 per., N. 56, W. 80 per. to Mangoright creek, the bearings of which is N. 31°, W.; thence over ye creek and up ye river S. 67°, W. 86 per. to a cove; thence S. 69, W. 60 per., N. 87° W. 58 per. to ye point of marsh, distance is S. 62°, W. to 0 N. 35° 320 per.; thence S. 19°, W. to 0 S. 87°, W. 110 per., N. 84°, W. 162 per. to a point, distance to hobshole is N. 86, W. to 0 N. 15°, W. 126 per., S. 77° W. to 0; thence N. 41°, W. 128 per., N. 18°, W. 136 per. to island in the marsh, N. 47°, W. 162 per., N. 26°, E. 200 per. to ye main land; thence N. 11°, W. 240 per. Rapp's creek, distance is W. to 0 N. 31°, W. 28 per. to 0; thence N. 45°, W. 116, N. 31°, W. 32 per. to Mr. Wm. Fauntleroy inr's, N. 27, W. 200 per. to a small creek, N. 69°, W. 106 per. to Mr. William Fauntleroy landing, S. 88°, W. 126 per. N. 83°, W 208 per. to the point of marsh, distance across ye river is S. 71°, W. to 0, N. 20°, W. 188 per.; thence S. 41°, 30 W. to 0 N. 5°, E. 284 per.; distance is N. 74°, W. N. 11°, W. 206 per.; thence S. 77°, W. to 0, distance to Payne's island creek is — N. 75°, W. to 0 N. 42°, W. 38 per., N. 11° W. 152 per., S. 78°, W. to 0 N. 3°, E. 50 per. to

ye — of ye marsh, N. 14°, W. 210 per., N. 1°, W. 166 per., N. 11°, W. 144 per. to the upper end Churchwell's clift, N. 22°, E. 22 per., N. 21°, 36 per., N. 46, W. 40 per., N. 17°, W. 304 per. to the end of Fauntleroy clift; thence N. 3°, W. 20 per., N. 22° W. 154 per., N. 45°, W. 42 per., Dancing point; thence N. 24°, W. 34 per., N. 44°, W. 46 per.; distance over the river is S. 57°, W. to 0, N. 58°, W. 90 per.; thence S. 6, E. to 0; thence N. 35°, W. 24 per. to ye Beaver dam creek, the bredth of is 4 per.

The distance from the upper end of the clift to the wreck of a boat where Mr. Warren began is N. 66° W. to 0 N. 1°, E. 14 per.; thence N. 87°, W. to ye 0 at ye wreck.

Surveyed by THO. BARBER, *S. R. C.*

499 State Papers, Colonial Entry Book, Vol. 52, p. 221, March 12, 1691.

Trusty and well-beloved, wee greet you well:

We have been informed by your letter of the eleaventh day of July last that you had received our royall commands, bearing date the first day of February, 1689, and giving due obedience thereinto; and having since heard what your deeputies and agents have offered to us, we have thought fitt to take our province of Maryland under our immediate care and protection; and by letters pattents, under the great seal of England, to appoint our trusty and wel-beloved Lionel Copley, Esq'r, to whose prudence and loyalty we are well assured, to be our governor thereof, untill whose arriwall we do hereby authorize and impower you to continue in our name the administration of the government and preservation of the peace and property of our subjecks there. Willing and requiring you to take care that one moiety of the impost of two shillings for every hhd. of tobacco exported from our said province be colleck'd for the use and support of our government there, and to permit the duty of fourteen pence p. tun, and the other moiety of the said import of five shillings p. hhd. to be collected and received for the use of the Lord Baltemore as proprietary of our said province, by such as shall be appointed by him to collect and to receive the same. We have been likewise informed by the representations that have been transmitted to us of the murder of our late collector, and accordingly directed some time past our ld. governor and councill of our colony and dominion of Virginia, to do all that in them lay for bringing the offenders to speedy justice, within our province of Maryland, if the fact should appear to have been committed there, and in that case to take care that such of the criminals as should be found within that our colony should be forthwith conveyed in safe custody to and said
500 province, there to receive a speedy tryall, and so we bid you farewell. From our court, at Whitehall, the twelfth day
1690–1. of March, in the third year of our reign.

By her ma'ts' command.

MOTTINGHAM.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15 1871.

Articles of Agreement between Philip Calvert, Esq., Chancellor of Maryland, deputed by the Honorable, the Governor of the said Province, to treat and conclude upon the Bounds of the said Province, and Col. Edmund Scarbrough, his Majesty's Surveyor General of Virginia, authorized and commanded to lay out the Bounds of Virginia.

1. Imprimis. It is agreed that all persons who have surveyed or patented and seated lands on the seaboard side, in the right of Virginia, and now fallen within the divisional line, shall enjoy their said lands, they taking a patent from the lord proprietary of Maryland, and within seven years entering rights in the said province, and paying the half fees to the surveyor general and full fees to the secretary and chancellor.

2. Item. All such as have already patented any lands in right of Virginia in any other place within the line aforesaid, which is not also patented in Maryland, shall have the privilege in the foregoing article allowed, upon such terms as in the said article is expressed.

3. Item. All such who have patented and seated lands in right of Virginia which do fall within the line aforesaid and are patented likewise in Maryland, but not seated in the same right, shall enjoy the same, unless it can be proved they have seated the said lands in defiance and despite of the said gov't after warning given, provided they take patents, enter rights and pay fees as in the first article is agreed.

501 4. Item. If any land shall chance to be patented only in right of Virginia, for which there is also a patent in Maryland, the patent in Maryland shall carry the land.

In witness whereof, the said Philip Calvert and Edmund Scarbrough have hereunto set their hands, the 25th day of June, 1668.

(Signed) PHILIP CALVERT.
EDMUND SCARBOROUGH.

Whereas his royal majesty's commission to the surveyor general of Virginia commands setting out the bounds of Virginia with reference to his majesty's hon'ble governor and council of Virginia from time to time to give, advise and order for directing the said surveyor general to do his duty appertaining to his office, in order thereunto his majesty's hon'ble governor and council have by letter moved the hon'ble, the Lord Baltimore's lieu. general of Maryland to appoint some fitting person to meet upon the place called Watkins point with the surveyor general of Virginia: and thence to run the divisional line to the ocean sea, &c.: the Hon'ble Philip Calvert, Esq., Chancellor of Maryland, being fully empowered by the hon'ble lieutenant general of Maryland, and Edmund Scarborough, his majesty's surveyor general of Virginia, after a full and perfect view taken of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay have and do conclude the same to be Watkins point, from which said point, so called, we have run an East line agreeable with the extremest part of the Westermost angle of the said Watkins point over Pocomoke river to the land near Robert Holston's, and there have marked certain trees, which are so

continued by an East line running over Swansecute creek into the marsh of the seaside, with apparent marks and boundaries; which, by our mutual agreement, according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on
502 the Eastern shore of Chesapeake bay.

In confirmation of which concurrence, have set to our hands and seals, the 25th day of June, 1668.

(Signed) PHILIP CALVERT. [SEAL.]
EDMUND SCARBOROUGH. [SEAL.]

STATE OF MARYLAND, *Baltimore City:*

I hereby certify that the above and foregoing two papers headed Articles of Agreement, &c., the first signed Philip Calvert and Edmund Scarborough, and the other signed Philip Calvert, seal, and Edmund Scarborough, seal, are truly copied from pages 62, 63, and 64, inclusive, of a bound manuscript volume labelled No. 4 state papers—Council Book, 1669, 1673—Maryland Historical Society, now in possession of the commissioners on the part of Maryland to adjust and settle the Maryland and Virginia boundary line, and belonging to the archives of the state of Maryland.

LEVIN L. WATERS,
Sec. of Joint Comm'n.

No. 137.

State Papers, Colonial, Vol. 43, No. 240.

Mem'd. Concerning Maryland.

Virginia, first so called, is a tract of land lying from 45 to 34 deg. N. lat. 1607 King James granted letters pat't to Sr. Thomas Yates, &c., for planting this tract of land called Virginia. Which was thereupon divided into two colonies, the one lying from 34 to the 40 deg., the other from the 40 to 45 deg'r. The charter granted for the first colony as above said (after the peopling and planting of that whole country), was afterwards vacated by a *quo warr'to* in the year 1623. Whereupon, in 1632, Cecil Lord Baltimore,
503 upon suggestions that there was a certain tract of land in America not inhabited by Christians (as appears by the preamble), obtained that charter whereby Maryland is now held, and for the possessing himself thereof used great violence in driving away such of the people out of that part formerly called Virginia as would not submit to his authority; wherein sev'll of his maj'tes subjects were slain, as appears by the notice taken thereof by his ma'tes late letter to the Lord Baltimore.

Endorsed: Mem'd Concern. Maryland.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

* * * * * * *

504 *Answer of Lord Baltimore to Questions About Maryland.*

No. 96—A.

Public Record Office, State Papers, Colonial, Maryland, Vol. 43, pp. 101-102, March 26th, 1678.

My Answer to the Enquiries Sent Unto Me by Order of the Lords of the Committee of Trade and Plantations.

To the 1, 2, 3, I answer that the said provynce was originally granted by his late maj'tie King Charles the First, of glorious memorye, unto my *ffather* in ffee, who, by the said grant thereof, was created lord and proprietary of the said provynce, to hold to him, his heirs and assigns forever; besydes which, there is a particular clause directing the making of lawes by him, and his heirs, by and with the advise of the ffreemen, or of the deputyes and delegates of the ffreemen of the said provynce, for the tyme *beinge* should think *fitt* accordinge; to which grant, power and discretion all the lawes which have hitherto beene made in the said province have been alwayes made. And the lord and proprietary of the said provynce, with the freemen and the deputyes, and delegates and deputyes of the ffreemen, thus assembled for these purposes, make the supreme court of this provynce, under the name and title of the generall assembly of the said provynce; besides which there were other courts, constituted by my said father, and still continued as courts of judicature, namely: a provincial court, beinge next to the assembly of the highest court of judicature there, and having cognizance of all causes as well relating to lawe as equity and the admiralty, with power to correct and amend the errors of all the inferior courts; alsoe a court of lawe in every county, of the name of the county court of each particular county and one general court for the
505 probate of wylls and granting of administrations.

To the 4th. No answer can be given in particular here, the records being in the said provynce, and necessarily remayneing there; nor could he, in case I were there, give any answer which could be satisfactory or certayne without returneing the copyes of the said records, which would make upp a long and very tedious volume; for the said generall assembly meets very often, and the lawes which are made are generally temporary and to continue only for three years, to the end that experience may inform us whether they will answer the ends for which they are intended. And where the necessity and exigencies of the provynce doe not enforce them to make any particular lawes, they use no other lawe than the lawe of England.

To the 5th, 6th, I answer as to castles and forts, there are none: soe that if an enemy should land there he would not finde any place wherein he may fix himselfe. Every county hath its trained bands, the number of which are proportionable to the inhabitants of each county for the tyme beeinge, and cannot be given by me here with

any certainty. There is besydes three troops of horse, consisting of about 180 in all, which have been of late kept on foote for the securitv of the provynce since the late rebellion in Virginia begann.

To the 7th. I answer that I doe not know of any privateers or pirates frequenting those waters.

To the 8th, 9th. I answer, as to the neighbors, they are either English or Indians. The English neighbours knowe their own strengths, of which I can give no acco't. As to the immediate next, Indians neighbours, their strength and numbers are not considerable. They lyveing under several distinct governments, some having two hundred, some three hundred, some five hundred subjects; and there is generally a good correspondence kept with them all. The more remote Indians are more numerous; but with those this provynce hath little correspondence, nor can it by any rea-
506 sonable conjecture be guessed what their strengths are. As to the trade of those Indians with whom the provynce corresponds, it is not considerable. They are generally an idle people, who take care for anything but foode, which they gayne by huntinge and fishinge; and sometimes they sell the English the skynns of such beasts as they kill, which is their only commodity that they have to sell, and it is not considerable.

To the 10th. I answer that the boundaryes, longitude and latitude of this provynce are well described and sett forth in a late mapp or chart of this provynce lately made and prepared by one Augustine Herman, an inhabitant of the said provynce, and printed and publiquely sold in London by his majestie's license, to which I humbly referr, for greater certaynty, and not to give their lord'ps the trouble of a large, tedious description here, but as to the number of acres patented and settled or unsettled, it is impossible to give any guess at them here, or to have any acc't of them, in case I were there, otherwise then by causing a review of all the grants which have passed, and which would require a great tyme and charge, and a greater number of persons to be employed therein then cann be easily procured.

To the 11th, 12th. I answer that the principal place or towne is called St. Marie's where the generall assemblye and provinciall court are kept, and whither all shipps tradeing there doe in the first place resort. Butt it cann hardly be called a towne, it beeing in length by the water about five miles, and in breadth, upwards, towards the land, not above one myle, in all which space, excepting only my owne house and buildings, wherein the said courts and publique offices are kept, there are not above thirty houses, and those at considerable distance from each other; and the buildings (as in all other parts of the provynce) very mean and little, and generally after the manner of the meanest farme houses in England. Other places wee have none that are called or cann be called townes, the people there not affecting to build near each other, but soe as to have their howses near the watters, for conveniencye of trade, and
507 their lands on each syde of and behind their houses, by which it happens that in most places there are not 50 houses in the space of 30 myles; and for this reason it is they have beene

hitherto only able to divide this provynce inty countyes, without beeing able to make any subdivisions into parishes or precincts, which is a work not to be effected untill it shall please God to increase the number of the people, and soe to alter their trade as to make it necessary to build more close and to lyve in towns.

To the 13th. I cannott answer otherwise then by referring to the printed mapp before mentioned.

(This document contains 25 answers in all, and is signed at end:) London, the 26th March, 1678.

CH. BALTEMORE.

Indorsed: 26 March, 1678.

Answer of the Lord Baltemore to the queryes about Maryland. Rec'd on ye 1st of Ap., 1678.

I certify that the foregoing is a true and authentic extract taken from the volume above named.

JOHN McDONAGH,
Record Agent.

June 1st, 1871.

No. 96—A.

State Papers, Colonial Entry Book, Vol. 52, Fol. 1, April 10th, 1676.

Journal and Entry of Papers Concerning Maryland and the Government Thereof.

Introduction.

His ma't'e' having been pleased to dissolve and extinguish the late councill of trade and foreign plantacons, and to commit what was under their inspection and management to a comm'ttee
508 of the privy councill, appointed for matters relating to trade and foreign plantations.

Their lord'ps on ye 10th of April, 1676, sign a circular letter, w'th severall heads of inquiry to ye Lord Baltemore, Lord Proprietary of Maryland.

The letter is as followeth:

Circular Letter to Ye Lord Baltemore.

After our very hearty commendations to ye lordships, his maj't'e having in his wisdom thought fit to supersede the commission by which his council of trade and foreign plantations lately acted, and thereby restoring all the business of that nature to its accustomed chanel of a committee of his privy council. And his maj't'e having more especially committed to a select number of the board, whereof we are, the care and management of things relating to his plantations, we have therefore thought it convenient to give y'r l'd'p advertis'm't thereof, and because we do not as yet find ourselves enabled to give his maj't'e such account of the state and condition of

hat colony as his royall service and the dependence thereof upon he Crown does require. We have therefore thought fit to send yo'r o'p (as we have done to others) some heads of inquiry, here annext, the better to guide your lordship in the method of that state and representation of things w'ch we expect from your lordship, and doe desire it may be done with all convenient speed.

And so not doubting of your lordship's care to advise us further in all matters that may, from time to time, conduce to his maj't'es service, our better discharge of ye trust reposed in us, we bid your lordship very hearily farewell.

From the council chamber at Whitehall, this tenth of April, 1676.

509 The heads of inquiry are as foll—:

1. What councils, assemblies and courts of judicature are within ye province, and of what nature and kind?

2. What courts of judicature relating to ye admiralty?

3. Where the legislative and executive powers of the government are seated?

4. What statutes, laws and ordnances are now made and in force?

5. What number of horse on foot in ye province; whether they be trained bands or standing forces. How they are armed, divided and exercised.

6. What castles and forts are within your province, and how situated and fortified; as also, what stores and provisions they are furnished withall?

7. What number of privatees or pirates do frequent ye coast; what their burthens are, the number of their men and guns, and the names of the commanders.

8. What is the strength of your bordering neighbors, whether Indians or of any other nation, by sea and land, and what is the state and condition of their trade and commerce?

9. What correspondency doe you keep with your neighbors?

10. What are the boundaries, longitude, latitude and contents of land within ye province, what number of acres patented, settled or unsettled, and how much is manurable land?

11. What are the principal towns and places of trade, and what manner of buildings are most used in the colony—as to ye strength and largeness of them?

12. How many parishes, precincts or divisions are within your lo'ps province?

13. What rivers, harbors and roads are within ye province, and of what depths and soundings they are?

I certify that the foregoing is a true and authentic extract taken from the volume above named.

JOHN McDONAGH,
Record Agent.

June 4th, 1871.

510 No. 113.

State Papers, Colonial Entry Book, Vol. 52, No. 86-'7, April 2d, 1681.

Letter from his Majesty to the Lord Baltimore.

Right trusty and well beloved, we greet you well: Whereas by our letters patent, bearing date the fourth day of March last past, we have been graciously pleased of our royall bounty and the singular regard wee have to the merits and services of Sr. William Penn, deceased, to give a grant to our trusty and well beloved subject William Esq'r., son and heir to the said Sr. William Penn, a certain tract of land in America by the name of Pensilvania, as the same is bounded on the East by Delaware river from twelve miles distance Northwards of New Castle town on to the three and fortieth degree of Northern latitude; if the said river doth extend so far Northwards; and if the said river shall not extend so far Northwards, then by the said river so farr as it doth extend, and from the head of the said river the Eastern bounds to be determined by a meridian line to be drawn from the head of the said river on to to the said three and fortieth degree, the said province to extend Westward five degrees in longitude, to be computed from the said Eastern bounds, and to be bounded on the North by the beginning of the three and fortieth degree of Northern latitude, and on the South by a circle drawn at 'welve miles distance from New Castle Northwards and Westwards onto the beginning of the fortieth degree of Northern latitude, and then by a straight line Westward to the limit of longitude above mentioned, as by our said lres. patents doth particularly appear. And to the end that all due encouragement be given to ye said William Penn in the settlement of a plantation w'thin the said country, we do hereby recommend him, his deputies and officers employed by him, to your friendly aid and assistance, willing and requiring you to do him all the offices of good neighborhood
511 and amicable correspondence which may tend to the mutual benefitt of our subjects within our provinces onder your respected proprieties; and more especially we doe think that in order hereonto you do appoint with all convenient speed some person or persons who may in conjunction with the agent or agents of the said William Penn make a true division and separation of the said provinces of Maryland and Pensilvania, according to the bounds and degrees of Northern latitude expressed in our said l'res patents, by settling and fixing certain land marks where they shall appear to border opon each other for ye preventing and avoiding all doubts and controversies that may otherwise happen concerning the same. And so wee bid you very heartily farewell.

Given at our court, at Whitehall, this second day of Aprill, in the 33d year of our reign.

By his ma'ts command.

CONWAY.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

No. 114.

State Papers, Colonial, Maryland, Vol. 43, No. 138, September 16th, 1681.

7 n. 6 w.
LONDON, 16, 7, 1681.

FRIENDS: I hope I doo not improperly call you soe, because in being soe you will exremely befriend yourselves as well as perform an act of duty to the king and justice to me. I am equally a stranger to you all, but you being represented men of substance and reputation in your part of the bay, which I presume falls within my pattent,

I chose to take this opportunity to begin our acquaintance,
512 and by you with the rest of the people on your side of my country, and do assure you and them that I will be soe farr from taking any advantage to draw great proffits to myselfe that you shall find me and my government easy, free and just; and as you shall study be faire and respectfull to me and my just interests, I will not be short of giving you all reasonable assurance on my part that I shall live kindly and well with you; and for this you have my word, under my hand.

I think fitt to caution you (if within my bounds, as I am ready to believe, but I desire noe more than my owne) that none of you pay any more taxes or sessments by any order or lawe of Maryland; for if you doe it will be greatly to your owne wrong, as well as my prejudice; though I am not conscious to myselfe of such an insufficiency of power here with my superiors as not to be able to wether that difficulty if you should. But the opinion I have of the Lord Baltimore's prudence as well as justice, and of the regard to your owne interests and future good of your posterity, makes me to waive all objections of that nature, and to hope we shall all doe the thing that is just and honest (which is allwaies wise) according to our respective stations.

I have noe more to add but my good wishes for all your happiness, and that, by the help of Almighty God, next spring you shall have some testimony of my best endeavours to contribute towards it as becomes my duty to God, to the king, and to theire people.

I am your reall friend,

WM. PENN.

For James Hirsetby, Edward Jones, Augustin Harman, George Oldfield, Henry Ward and Henry Johnson, at theire plantation in Pennsylvania.

Endorsed.

Copies of a letter from Wm. Pen to Fregby, Jones and others.

Rec'd inclosed from ye Lord Baltemore, Ap. 24, 1682.

Caution that they pay not taxes to my Lord Baltemore.

* * * * * * *

512½ State Papers, Colonial, Maryland, Vol. 43, No. 37, June 12th, 1683.

S'R: Haveing given you formerly the trouble of many l'res, I blush to be still guilty of the same rudeness, and humbly begg you'll please to pardon me for these few lines, w'ch addresse themselves to you for a favour, w'ch I am assured ye will not be unwilling to grant me. That w'ch I presume to beg at your hands is that you'll favour me so far, that should Mr. Wm. Penn, (who is suddenly bound for England, as he hath lately assured me,) move his Maj'ie for any further order and comands in relacon to the bounds of Maryland Penselvanea, that nothing be granted untill I am heard at the council board, and that nothing be obtained by Mr. Penn to the prejudise of my interest on Delaware river, where Mr. Penn pretends to hold a great part of my province by a title (as he saith) from His Highness, the Duke of York. In May or June next I will make my personall appearance and make my defence, w'ch I begg I may have granted me, for the unsettled condition of my affairs here will not allow me to take a voyage this shipping. In obtaining this favour for me, you'l infinitely oblige,

Most hon'ble sir,

Your faithful, humble, and most obediant servant,

C. BALTEMORE.

12th June, 1683.

Endorsed.

12TH JUNE, '83.

To the Right Hon'ble Lord Baltemore, S'r Lyonell Jenkins, one of his Maij'ties principal Secretaries of State, humbly pr'sent att White Hall.

Obt.,

MR. PENN.

Maryland 12 June, 1683.

Certified to by:

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

513 State Papers, Colonial, Maryland, Vol. 43, No. 193.

PALUX, *Decemb. 7th,* 1683.

DEAR SIR: The beginning of the last month I writt to you, and therein gave you my acknowledgm't for your obliging lre of the 8th of 7 per, wherein you very kindly assured me that nothing would be concluded by the council without hearing me or my agent, and that if I came over in the spring you believed I should find that business of Delaware undertermined. I hope (and by your favour I presume to assure myself) that I may be heard in person afore the lords of the councill*l* with proceed in a matter of that concerne to my

interest; and w'ch gives me still the greater confidence I shall have liberty to appear in person to make out my right to Delaware is, that my father in his lifetyme, and since his decease I have petitioned his royal highness for a hearing of that matter, but his highnesse his greater affaires did not afford time for it whilst I was in Engl'd, so that since I sought for a hearing of that business so far as with good —manners became me towards his highnesse, it would now be somewhat hard that in my absence I should be concluded. S'r, it is a matter of that importance to me, that I dare not comit the management of it to the best agents I can procure to act for me in my—absence; therefore I earnestly recommend to your kindness that you will continue moveing for some time to be given me for my appearing in person at the council board, where I hope to be the latter end of May next, and shall then cleere all things soe as may fully satisfie the lords of his majestie's most honorable privy councill of my right to Delaware—that part I meane w'h lyeth to the Southward of forty—Northerly latitude. And if my unkind neighbor Wm. Penn, or his agents, are able to make out that there were Dutch—seated Delaware afore my pattent for Maryland was granted (which will be somewhat hard to prove), I will then make it plainly appeare that such Dutch were usurpers, and were utterly disowned
514 by the states of Hollanders. Of this I have undeniable testimonies, such as Mr. Penn will not withstand; and possibly then I shall be able to produce something under Penn's hand to the same purpose. S'r, I am so well armed and provided with proofs of this kind that I onely begg a personall hearing, and that you will become a solicitor for me therein, is the favour and kindness I beg at your hands, which I will gratefully owne as becomes one that already is,

Good s'r,

Y'r faithfull and obliged servant,

C. BALTEMORE.

Endorsed: 7th December, 1683. From my Lord Baltemore, concerning Mr. Pen. Rec'd 16 Feb., 168¾.

Addressed: For Mr. William Blathwait, at Whitehall.

Certified to by

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

State Papers, Colonial, Maryland, Vol. 43, No. 39.

Dec'r 11th, 1683.

Honored Sir: I know it is to great a boldness I take in giveing you the trouble soe often, as I doe with my letters, which I should not presume to doe, did not a very great concern of mine lye afore the councill of which you are. It is I about a grant which I am assured my ill neighbor, William Penn, is endeavouring, by his

agents in England, to gett pog't, the great seale of noe lesse than one-third of my province. I meane that part which lyeth to the Eastward of Chessapeake bay, and is on Delaware river to the
515 Southward of 40 degree Northerly latitude which he pretends was seated by some Dutch afore my pattent for Maryland was granted, which neither he nor his agents are, as yet, able to prove, and whenever they doe it will signifie title to my prejudice, for I will sufficiently make it evident that if any Dutch were there at that time seated, they were but usurpers, and had usurped what they soe seated, being never owned by the states of Holland—nay, I will oblige myselfe to prove such were disowned by the states, if I may have liberty and time allowed me till May next, to appeare in person, at the council board there, to defend my right which I hope you'l favor me so far as to procure for me, and I shall account myselfe highly obliged, and forever remaine Sr.,

Your humble serv't, most faithful serv't,

C. BALTEMORE.

11th December, 1683.

For the Right Hon'ble Sr. Lyonell Jenkinsone, of his majesties principall secretaries of state.

LD. BALTIMORE.

11th Dec'r,

Letter.

MARYLAND, 11*th Dec'r*, 1683.

Present at Whitehall.

I certify that the foregoing is a true and authenticated copy taken from the volume above named.

JOHN McDONOUGH,
Record Agent.

July 14th, 1871.

Colonial, State Papers, Maryland, Vol. 43, No. 191.

FEB. 12*th*, 1684.

A certain tract of land in America having been surrendered long since by ye Dutch to ye king and ever since in ye possession of it his royal highness. His royal highness having demised it to William Penn, Esq., (lying contiguous to Pensilvania), at a rent.
516 The Lord Baltemore now disturbs William Penn and his agents there, and opposes ye passing of a patent of it to his roy'll highness here. And upon a hearing before ye lords of ye committee of ye plantations, it being alledged in the behalf of his royal highness that this tract of land was inhabited by Christians before ye Lord Baltemore's patent w'ch extended only to land uninhabited by Christians. It was ordered that they should be ready with proofs to that point.

It is now desired, in the behalf of his royall highness, a day may be appointed to be heard to it.

Endorsed: Memo. Concern Pensilvania. Rec'd and read 12 Feb. 8¾.

The business put off till Aprill, when my Ld. Baltemore will be here.

B. C.

X. 22.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONOGH,
Record Agent.

July 14th, 1871.

State Papers, Colonial, Vol. 43, No. 197.

INNER TEMPLE, *June* 30, '84.

SR: There is a cause depending before the lords committee for ferrein plantations between William Penn, lessee, to his r'll highness and my L'd Baltemore, touching a tract of land in the West Indies, the hearing of which was put off at the desire of my L'd Baltemore till Aprill last, at w'ch time they undertook to be ready for hearing; it is the duke is principally concerned as being his inheritance and his tenants are disturbed, w'ch obligee me
517 on his r'll h'ss behalf to desire that you would represent to the lo's of ye committee the prejudice he may suffer by any farther delay, and I hope you will y'rself give the speeding of this cause all the assistance you can.

I am your most humble serviant, E. HERBERT.

Endorsed: 30th June, '84. From S'r E. Herberbert, concerning W. Pen. Read 2 May, '80.

For William Blathwayt, Esq., secretary to the lords B. C. committees for forran P. 25. Plantations.

Certified to by

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

State Papers, Colonial, Maryland, Vol. 43, No. 199.

MARCH 17*th*, 1685.

To answer my Lord Baltemore's letter to me of the 11th July, 1682, will be sufficient to clear myself of what he hath charged me w'th untill that day, it being a repetition of ye jornall he kept, but cannot begin my answer w'th ye beginning of his letter, he having began with ye end of the story.

The lett'r I sent my lord from the head of the bay, bore date ye 25th of 7'ber, '81, occasioned by my long passage up thither, haveing spent most of the time I intended for my jorny to New York, or to have sent thither to borrow Coll. Morresses instrument, by w'ch I

desired tenn days longer after I gott home,—being very ill, sent a second letter to my lord, w'ch he mentioned ye receipt off; but before it came to his hand, I had one from him of ye 10th 8'ber, '81,
(w'ch he cunningly would evade mentioning,) wherein he
518 tells me he could not come up that year for fear of ye frost,
but would wholely lay the not meeting that—year to me. To mine of the 17th March, 8½, I might reasonably expected an answer before ye 22nd of May, w'ch was the day I rec'd his of the 14th, *ibid.*, in w'ch he tells me he had ended his sessions of assembly, and settling his business, in ord. to meet me ye beginning of ye next month without regard to any affaires of mine, ye w'ch at ye time was very urgent, for having engaged to pay ye Indians for the land I had bought of them before ye middle of June, in—expectation of w'ch they deferred their hunting till it—was almost too late for that year and if they had gon before I had payd them wee could not have had any land that yeare to seat the people on y'r daily came there, it being our custome not to use any land unbought of y'r natives, a thing my Lord Baltemore—a stranger to, haveing taken all his by force, never purchased any of ye poor natives, nor did he ever mention his haveing an instrument, as I desired by mine, altho' he knew I had none, but that had sent to New York to borrow one, w'ch was not yett come, nor had it, had not I gon myself and ingaged for its security, on ye 26th of May, seeing a necessity for my goeing to New York as aforesaid sent an express to my Lord Baltemore, supposeing it might be with him before his setting out, with orders at home, that if they heard of my lord's coming, to send an express to me to New York. My lord here takes notice of the receipt of mine of ye 26th May, and yet in it I mention ye 10th June, but not ye occasion, which was to desire it might be putt off till I came from New York, but his lordship's way of showing his pollitick; and now, sr., I begg leave yt I might not follow his lordship's—immathodicall method to leave his letter of ye 11th of July a while and come to some others of his and agents, that I might ye more easily keep the path I began in—here ought to be read his letter of the 1st of June, '82, by w'ch he excuses his not coming himselfe, as he had promised, but yt he had sent his com'rs, and hoped they would meet w'th persons the like qualified,
this very letter was brought by ye com'rs themselves, and ye
519 first time I ever heard he had an interest to send com'rs, and
therefore no wonder they were disappoint'd of meeting any of the like qualifi'd. W'th this letter I received one from his com'rs dat—from Augustine Harman ye 10th June, '82. They were both brought me to New York by George Goforth. In this letter they desired—I would dispatch persons with instruments to joyne with them. In order to this I shipp off an instrument at New York, on board of Creger's sloop, and took my jorney by land to meet them. When the sloop arrived at New Castle, my Lord Ba's com'rs were there, and understanding the instrument I had borrowed was on board, did, by ye means of ye Dutch inhabitant of that towne, procure the master, (he being a Dutch man,) to bring it on shore, and there they used it, as you may see by my lord's letter of 11th

July, (a confidence I never mett the like, to dare to touch an instrument that was to be used by the contrary party, and so privately, that no friend of ours was by.) Now how honest this will appear before all sober men, as his lordshipp is pleased to say of my actions, I know not, but in my opinion they that don't take it for knavery will be mistaken. I beg pardon for this digression. The day after they had used the instrument, I came down to Newcastle, believing the com'rs had been there, but they were gone the night before.

The next morning I sent Mr. Haig to Augustine and Harmans, in hopes to a found them there; but they were gone before he came there, but on the same day. What reason these gent'men had to goe back, when they saw the instrument and was told I was near home, I can't imagine. July 7th, '82, I sent to my lord to give him a No. 1 y't. I made all possible speed to meet his com'rs. How strangely I mist them, and how ready I was now to joyne with them now had secured pay for ye Indians. By a lett. from my lord of ye 14th August, '82, he tells me ye sometime ye next month he intended to send his com'rs of againe, and perhaps come himselfe, the w'ch accordingly he did. A particular journal of it I have writt by itselfe.

William Markham, gent., maketh oath that this is a true
520 answer to all the allegacons (yet known) alledged by the Lord Baltemore.

WM. MARKHAM.

Endorsed: An answer to ye Lord Baltimore. Sworn before the committee, March 17th, 1684/5.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers, Colonial, Vol. 43, No. 201.

MARCH 17TH, 1685.

MY LORD: Yesterday I putt my instrument on board my boat and provided otherwise to attend yo'r lordship at New Castle in order to lay out the linne betwixt the two provinces toward Chesapeak bay, but as the tyde served and by boat ready to saile, I received advice from Chechister, at Markes Hook, of yo'r lordshipp's carriage in that—towne, w'ch I no sooner received but reflecting on yo'r lordshipp's last at parting from Upland, I saw it—absolutely needful for me to consult with ye persons in this province most concerned for the safety of it; and, my lord, they are of opinion that your lordship hath left his province in y't disorder that it is absolutely necessary for me att this time to stay in it as well to quiet the mind of the inhabitants as also to prevent any such thing for the future. Thus, my lord, yo'r lordship has prevented my attendance, &c.

This is a true copy sent to the Lord Baltemore (the conclusion or complement excepted), to—w'ch William Markham maketh oath.

WM. MARKHAM.

521 Endorsed: Mr. Markham's attestation of a letter sent to my L'd Baltemore. Sworne before the committee, March 17th, 1684/5.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers, Colonial, Vol. 43, No. 204.

MARCH 17TH, 1685.

To his Excell'y, my Lord Baltemore:

Whereas yo'r lordship hath been pleased to desire a reason of me, under my hand, why I concur not with yo'r lordship in laying out the bounds of this province, Penns'vania, upon Delaware river. My lord, this is my reason: that as I received all y'r part of the river Delaware beginning 12 miles above New Castle towne and soe upwards from the government of New York, w'ch is according to the express words of his—maj'ts letters pattents to our proprietory William Penn, Esq're, I most humbly conceive that I am not to be —accoumptable to any other person then his maj'ty or royal highness for any part of this province—laying upon Delaware river and soe bounded, but if yo'r lordship be willing to lay out ye bounds betwext this province, and yo'r lordshipps laying towards Chesapeake bay and the river on that side, I am ready and willing to wayte upon yo'r lordship for y'r end and purpose.

I am, my lord, yo'r lordship's most humble servant,

WM. MARKHAM.

Upland, in Pennsylvania, 7 ber 25, 1682.

Wm. Markham maketh oath that the above mencioned is a true copy, delivered by me to ye Lord Baltemore.

WM. MARKHAM.

522 Endorsed: Pensilvania. Mr. Markham's reason for not laying out the bounds of Pensilvania with ye Lord Baltemore, sworne before the committee March 17. 1-84/5. Wm. Markham's reason given Lord Baltemore. why he lays not out ye bounds of the province.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers, Colonial Entry Book, Vol. 52, p. 107-114.

Order and Report upon ye—Difference Between the Lord Baltemore and Mr. Penn.

AT THE COURT AT WHITEHALL, *13th Novemb.*, 1685.

The king's most excell't maj is, in councill:

The following report from the right hon'ble the lords of the committee for trade and foreign plantations being this day read at the board.

Mem'd—The lords of the committee for trade and plantations having, pursuant to his late ma'js order in councell of the 31st of May, 1683, examined the matters in difference between the Lord Baltemore and William Penn, Esq., in behalf of his present majesty, concerning a tract of land in America commonly called Delaware, their l'ps find that the land intended to be granted by the Lord Baltemore's patent, was only land uncultivated and inhabited by savages, and that this tract of land now in dispute was inhabited and planted by Christians at and before the date of Lord Batlemore's patent, as it hath been ever since to this time, and continued as a distinct colony from that of Maryland, so that their lo'pps humbly offer
523 their opinion that for avoyding further differences the tract of land lying between the river and bay of Delaware and the Eastern sea on the one side, and the Chesapeake bay on the other, be divided into two equal parts by a line from the latitude of Cape Henlopen to the 40th degree of Northern latitude, and that one-half thereof lying towards the bay of Delaware and the eastern sea be adjudged to belong to his ma'jy, and that the other half remain to the Lord Baltemore as comprised within his charter.

Council Chamber, 7th Nov'r, 1685.

His ma'jy well approving of the said report, it was thereupon ordered by his maj'ty in councell that the said land be forthwith divided accordingly, whereof the said Lord Baltemore and William Penn, together with their respective officers, and all others whom it may concern, are to take notice and give due and ready obedience—thereunto.

Report Touching the Prosecution of the Quo—Warrantoes in the Plantations.

Memd.—My lord president is desired by the right hon'ble, the lords of the com'tee for trade and plantations, to move his maj'y that directions may be given to Mr. Attorney—Gen'll that the prosecution of severall writts of *quo warranto* against the proprietys of the province of Maryland, and against the colonies of Connecticut and Rhode Island, and the proprieties of East and West New Jersey, and of Delaware, in America, may be renewed, and that the—same may be prosecuted to effect.

Councill Chamber, 21st April, 1686.

524 *Mr. Attorney to Prosecute My Lord Baltemore and Other Proprietors in America.*

At the Court at Whitehall, *the 30th of April,* 1687.

Present: The king's most excellent maj'y in councill.

Whereas, on the 10th and 17th of July last past it was ordered that Mr. Attorney should proceed by *quo warranto* against the charter granted to the Lord Baltemore's ancestors of the propriety of Maryland, as also ag't the gov'rs and comp'ies of the colonyes of Connecticut, Rhode Island and Providence Plantation, and against the proprietors and East and West Jersey, and of Delaware, and all in America, his maj'y in councill this day thought fitt to order, and it is hereby ordered, that S'r Rob't Sawyer, kn't, his maj'ies attorney generall, do forthwith put the said order in execution by causing the proprietors of the aforesaid places to be prosecuted on the said writt according to law, in order to their vacating of their several charters or grants.

Memon'd for my Lord President: That his maj'y be moved for the signification of his pleasure concerning the writts of *quo warranto* issued against the severall—proprietors and corporations in America.

Councill Chamber, 18th May, 1687.

Order of Councill to Mr. Attorney and Mr. —— Solicitor to —— Prosecute the Quo Warrantoes Issued Against the Several Proprietors and Corporacons in America.

At the Court of Hampton Court, *the 28th of May,* 1687.

Upon reading a report from the right hon'ble, the lords of the com'tee for trade and plantations, it is this day ordered by his maj'y in councill, that Mr. Attorney and Mr. Solicitor Gen'll do
525 forthwith proceed upon and prosecute the *quo warr'tss* which have been issued or ordered to be issued out against the severall proprietors and corporacons.

Mem'dum.—On the 20th of Feb'y, 1688/9, the Lord Baltemore, attending in pursuance of orders from their lord'ps, is told by the com'tee that it is expected from his lor'p that he should cause King William and Queen Mary to be proclaimed in Maryland; whereupon my Lord Baltemore promiseth to obey any orders he shall receive from the board.

And on the 26th the following letter from the councill, enclosing the form of a proclamation for proclaiming the king and queen in Maryland, together with a copy of the oath appointed by act of parliament to be taken instead of the oaths of allegiance and supremacy, are delivered to his lord'p.

Letter from the Councill for Procla. the King & Queen in Maryland.

After our very hearty commendations—
Whereas William and Mary, prince and princess of Orange, have, with the consent and at the desire of the lords spiritual and temporal and commons, assembled at Westminster, been proclaimed king and queen of England, France and Ireland, and of the territories and dominions thereunto appertaining, we have thought fitt hereby to signify the same unto your lo'p, with directions that with the assistance of the councill and inhabitants of Maryland you proclaim their most sacred ma'ties, according to the forme here—enclosed, with the solemnities and ceremonies requesit on the like occasion, as also that your lord'p do give directions that the oathes herewith sent you be taken by all persons of whom the oathes of allegiance and supremacy, or either of them, might heretofore been required; and that the said oaths of allegiance and supremacy be sett aside and—abrogated within your propriety.

526 And so we bid your lo'p very heartily farewell. From the councill chamber at Whitehall, the 19th day of February, 1688/9.

YOUR LOR'PS VERY LOR. FRIENDS.

A Proclamation for the Province of Maryland.

Whereas William and Mary, prince and princess of Orange, have with the consent and at the desire of the Lord's spiritual and temporall and commons assembled, at—Westminster, been proclaimed king and queen of England, France and Ireland, and of the dominions and territories thereunto belonging Wee, therefore, ye proprietor and councill together with the principal officers and inhabitants of this colony and plantation of Maryland, do hereby with one full voice and consent of tongue and heart, publish—and proclaim William and Mary prince and princess of Orange to be king and queen of England, France and—Ireland, defenders of the faith and supreme lord and lady of their maj'is province of Maryland, and of all the other territories and dominions to the crown of England, belonging, to whom, wee do acknowledge all faith and true allegiance with all hearty and humble affection,—beseeching God by whom king's reign to bless King William and Queen Mary with long and happy years to reign over us. God save King William and Queen Mary.

State Papers, Colonial Entry Book, Vol. 52, p. 117.

Report Concer. Maryland vid. the Report and Order Reb. Plan. in Gen. Vol. 2, page 44.

Memorand.—There lord'ps taking into consideration the present state of the plantations with relation to the war with France
527 among other things to be represented to his ma'ty agree to move his ma'ty that as Maryland, Pensilvania and Carolina

are proprieties of great extent in America,—which do not hold themselves subject to his immediate—government, nor render any acc't to his ma'ty of their proceedings his ma'ty would please in this conjuncture to give such directions as may better secure their ma'ty's interest in those parts and putt them into a condition of defen o against the enemy. Upon which representation his ma'ty in councill, the 2nd of April, 1689, was pleased to order their *laps* to propose to his ma'ty what may be fit to be done for securing their ma'tie's interest in the severall proprieties in America.

Whereupon their lop's, by their report of the 16th of May, 1689, among other—things represented to his ma'ty as—follows:

Report Concerning Maryland.

May It Please Yur Ma'ty:

We have further considered the present condition of Maryland, Pensilvania, and Carolina, as they are—provinces of great extent and importance to the crown. But as they have been formerly granted by your ma'ts predecessors to severall persons in absolute propriety by—which title they claim a right of governm't. Wee humbly conceive their present circumstances and relacon the stand to the governm't of England to be a matter worthy the consideration of the parliament for the bringing of these proprietys and dominions under a nearer dependence on ye crown.

All w'ch is humbly submitted.

On the 25th of May, 1689, their lops agree further to move his ma'ty as follows:

Report Concerning Maryland.

Memor'd'm.—The right hon'ble, the lords of the com'tee for trade and plantations, desire my lord president humbly to propose to his ma'ty that his pleasure be signified to some of his ma'es privy councell, who are members of the house of commons, that they move the house to take into their consideration the present state and
528 government of Maryland under the Lord Baltemore and the relation that province stands unto the government of England, in order to bring the same under such a dependence on the crown as is necessary in the present conjuncture.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers, Colonial Entry Book, Vol. 52, p. 146, Jan'y 7th, 1690.

Mem'd'm.—To the lords of the comm'tee for trade and plantations desire my lord president to lay before his m'ty, that they have read several letters presented to them by the Lord Baltemore, proprietor

of Maryland, the copies of two addresses, and other papers, with a declaration in print from the inhabitants there, whereby it appears that the inhabitants having not received any orders from the Lord Baltemore, have of their own accord, proclaimed their maj's, and remaine in armes in opposition to the Lord Baltemore's government. Whereupon their lops are consulting Mr. Attorney Generall touching the power granted by charter to the—Lord Baltemore, in order to such a settlement of that province as may be most for his majesty's service, and are of opinion that in case the same cannot be done before the departure of the ships for Virginia, a letter from his maj'te may be sent to those in the present administration of the governm't in Maryland, approving of their having—proclaimed their ma'ties, and ordering them to preserve the peace, and to take care that no spoile or violence be—committed, and that things remain in the condition they shall be in at that time, untill his ma't's further—pleasure shall be known.

529 *Order for a Letter to the Government of Maryland.*

Councill Chamber, the 7th of January, 168 9/10. At the court at Whitehall, the 30th of Jan'y, 1689:

Present: The king's most excell't ma'ty in councill.

The rt. hon'ble the lords of ye committee for trade and plantations having this day presented to the board the draught of a letter from his maj'y to be sent to Maryland. His ma'ty in councill is pleased to order that one of his ma'tys principall secretaries of State do prepare a letter for his maj'tys signature, according to the said draught, to be sent to Maryland by the first opportunity.

William R.:

Whereas by your declaration and by the copies of two—addresses laid before us, the one entitled an humble address of our loyall Protestant subjects, inhabitants of our—provence of Maryland. The other being the address of the representatives of our said Protestant subjecks, the originalls whereof, as we are informed, have been intercepted by the French. We are given to understand the reasons and motives for your appearing in armies upon notice of our accession to the crown with your readiness in proclaiming us and the queen within that province. And being also assured by you that you will secure the government—thereof in such manner as you can for our service untill our royall pleasure shall be known therein. We have—thought fitt hereby to signify our royall approbation of your having proclaimed us and the queen. And we do further authorize and impower you to continue in our name—your care in the administration of the government and preservation of the peace and properties of our subjecks—according to the laws useage of that our province—untill upon a full examination of all
530 matters and—hearing of what shall be represented to us on the behalf of the proprietor and his right. Wee shall have taken—such finall resolution and given such directions for a lasting

settlement as shall most conduce to our service and to the security and satisfaction of our subjects within that province, and in the meantime we are pleased to direct you to suffer the proprietor or his agents to collect the revenues arising there, and that such part only of the said revenue be applyed by you for the support of the—government, as hath usually been allowed and applied by the said proprietor to that purpose. And we do further strictly charge and require you to take especiall care that the several acts of trade and navigation be duly observed and put in execution within our said province, and so we bid you farewell.

Given at our court, at Whitehall, the first day of February, 1689, in the first year of our reign.

By his ma'ts comand.

SHREWSBURY.

To such, as for the time being, take care for preserving ye, ye peace and administering the laws in our province of Maryland in America.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers, Colonial Entry Book, Vol. 52, p. 173-8, Sept. 1, 1690.

To the Right Hon'ble, the Lords of the Committee for Trade and Plantations:

The petition of Charles Lord Baltimore humbly sheweth that your petitioner was ordered to attend your lordsh's on Tuesday the 7th instant, w'ch he did, and bro't with him severall persons, inhabitants and traders of the province of Maryland, who have
531 had long knowledge of your pet'r's manner of government there; that your pet'r was then ordered by your l'hs to attend his maj'tie, in councill, upon the Thursday follo'g; w'ch, accordingly, your pet'r did with the persons aforesaid, but was told by Mr. Blathe'ayt; was again referred to your lord'h's, whose order your pet'r has received to attend this day.

Your petitioner humbly prayes your lord'h's yf you will be pleased to grant him a hearing before your lordsh's concerning y'r present disturbances and troubles in the said province of Maryland, in order to the quiet resetting the same in ye hands of your pet'r's deputies and offices, that law and justice (by these troubles obstructed) may again have their due course to ye gen'll good of his ma'tie's subjects there, and that your lordsh's will be pleased to admitt the inhabitants and traders aforesaid to speak their knowledge in anything relating to the affairs of ye said province.

And your pet'rs shall ever pray, &c.

Humble Proposals of Charles Lord Baltimore to the R't Hon'ble the Lords of the Committee for Trade and Plantations.

That those persons that are in commission for dep'tyrs, counciil and justices of the province of Maryland shall be removed for the satisfaction of his maj'y.

That a commission shall be forthwith sent to one Mr. Henry Coursey, to be deputy governor, a person of good repute and credit, and well esteemed by all ye inhabitants of Maryland, he being of the church of England, and a very ancient liver and inhabitant there, as most of the considerable dealres and traders to that province can testify.

That such other persons y't are profest Protestants, and men of good repute, credit and estate, (as several of the traders and dealers of Maryland can also testifie,) shall be nominated and im-
532 powered to be the councill there, to whom his lords'p prayes the king's commands and directions, for the full examination of the truth of all such matters pretended by John Coode and those other persons—joyned with him to be the cause of their taking up—arms and possessing themselves of the government there.

That his lords'p does not desire (if his maj'tie forbid) ye prosecution or any way molesting the said Coode and his adherents for any act or thing done by them—against ye government, his lords'p being willing to give good security and to remain as a pledge here that his majestye's commands and orders herein shall be most faithfully and punctually obeyed.

That his lords'p is fully assured—will give all the satisfaction the inhabitants in gene'l can desire, and which his lords'p is likewise certain all the merch'ts, traders and dealers from that province will be very much satisfied with.

From ye L'd Chief Justice Holt (*Bundle E. N.*, 9).

My Lord: I think it had been better if an inquisition had been taken and the forfeetures committed by ye Lord Baltimore had been therein founde before any grant be made to a new governor. Yet, since there is none, and it being in a case of necessity, I think the king may, by his commission, constitute a governor whose authority will be legall; and tho' he might be responsible to the Lord Baltimore for the people, if an agreement can be made with the Lord Baltimore, and will be convenient and easy for the governor, y't the king shall appoint an inquisition, may at any time be taken, if the forfeeture be not pardoned, of thich there is some—doubt.

I am, my lord, your lordship's
Most humble and obedient servant,
JOHN HOLT.

Sergeant's Inne, June 3d, 1690.

533 *The Attorney Gen'll Report Upon the Draft of a Commission for the Govern. of Maryland.*

At the Councill Chamber at Whitehall, the 22nd day of August, 1690.

The R't Hon'ble, the lords of the committee for trade and foreign plantacons are pleased to referr the draught of a commission to Lionel Copley, Esq'r, for the government of Maryland, hereunto annexed to Sir George Treby, kn't, their ma'ties attorney generall, who is desired to consider the same, and to report his opinion to the committee—whether the said draught may be fitt to pass the great scale accordenly.

WILLIAM BLATHWAYT.

Mem'dum.—The draught referred to the attorney gen'll was according to ye commission usually to ye gov'ts on ye other their majesties plantations.

May it please your lo'pps:

In obedience to your lo'pps order of reference I have perused the draught of the commission therein menconed, and I am of opinion as followeth: I understand the seizure of this government to be for necessity, as being the only—means of preserving the province. The nature of the—seizure is only to take the government out of the hands that neglected and endangered it into the king's hands. But the lawes and customes and the propertyes of the inhabitants are to be preserved as farr as may be. I doe not know whither or how farr the particulars in this draught are agreeable to the laws and manner of government which have been seated there, or may be prejudicial to the interests of the inhabitants.

I did draw a commission general reciting y'd confusion that was there, and the danger of loosing the province to ye enemyes,
534 and the necessity of takeing it into their majesties hands and thereupon constituting a governor there to governe according to the laws of the place (and as the administracion ought to have been by the former—governor), and to defend the provence and take and apply the public revenue to y't purpose. And I see noe—cause to depart therefrom or to recommend this present draft hereunto annexed, not knowing that the particulars therein conteyned are agreeable to the settled orders of governm't there or absolutely necessary for the preservation of the province.

Mem'dum.—The draught of a short commission mentioned by Mr. attorney gen'll was returned to him again by Capt. Copley.

All wc'h is humbly submitted to your lo'pps great wisdomes.

GEO. TREBRY.

Sep't 1st, 1690.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

535 *Gov. Tazewell's Manuscript.*

The following pages are a correct copy of a manuscript said to be in the handwriting of Gov. Tazewell, relating to the question of boundary between Maryland and Virginia, and can be read to advantage in connection with the opinion of Reverdy Johnson upon the riparian rights of Virginia proprietors on the Potomac river.

C. E. SNODGRASS.

The territory claimed by the State of Maryland is held by the State of Virginia, and is included within the meridianal lines. The Easternmost of these lines passes over a stone, well known as the Fairfax stone, which was planted on the 17th day of October, 1745, at a spot "in the Alleghany mountains, where that part of the Potomac river, which is now (then) called Cohongoroota, first rises. This stone was intended to mark, and forever designate, 'the first head' spring of the river Potomac." The westernmost of these meridians passes over some spot that may hereafter be pointed out as the most western source of any branch of the Wappacomo, now known as the South branch of the said river Potomac. Both these meridianal lines terminate Northwardly at the parallel of latitude long known as Mason and Dixon's line, which is conceded to be the Southern boundary of the State of Pennsylvania. The space included between this parallel of latitude, the two meridianal lines described above, and the Wappacomo, or South branch of the river Potomac, and any of its branches that may extend farthest towards the West, is that to which the State of Maryland now asserts a title.

This space comprehends large portions of the counties of Hampshire, Hardy, Pendleton, Randolph and Preston, in Virginia. All of it is held by individuals under ancient grants issued by the government of Virginia; and the inhabitants of this region have
536 been represented in the general assembly of Virginia as members of this community ever since the year 1738, certainly, and how long before we know not.

In examining this claim advanced by the State of Maryland, it is not necessary to refer to the sources from which the State of Virginia derives her title to the territory in question, which she has so long held, and still holds, as her own domain. It would be easy to do this: but the claim advanced by the State of Maryland concedes, that not only this particular territory, but that every portion of what is now held by that State as her domain, was originally part and parcel of the more ancient colony of Virginia, and was carved out of this by the letters patent granted by King Charles the First to Cecelius Calvert, Baron of Baltimore, on the 20th of June, 1632.

Indeed, one of the principal foundations on which this claim is rested by the State of Maryland, is the solemn act of Virginia, contained in her former constitution, whereby she released to Maryland, the territory included within the limits of this charter.

Claiming thus under Virginia, Maryland not only admits, but

asserts the original right of Virginia to the particular territory in question, and so supersedes the necessity for the exhibition of any title by Virginia to maintain her rights.

Moreover, as the claim advanced by the state of Maryland is confined to the territory said by her to be comprehended within the limits of this grant made to Lord Baltimore, if the tract in question is not included within these limits it is conceded by Maryland that she has no right to it.

Therefore, so far at least as the interests of Maryland are involved, it is of no consequence whether the region now held by Virginia belongs to her of right or not; for even if it does not belong to Virginia, it does not belong to Maryland, according to her own shewing.

537 Then, the only question presented by the claim advanced on the part of the state of Maryland is this, is the tract of country described above included within the limits of the charter granted by King Charles the First to Lord Baltimore in 1632?

The mere presentation of such a question by the state of Maryland at this time cannot fail to attract attention to the singular position it shews her desire to assume. Relying upon the charter to Lord Baltimore, upon the recognition of that charter made by Virginia in 1776, and upon the release then given by Virginia to Maryland of all the territory she then held as being within the limits called for by this charter; the proposition of Maryland says to Virginia, in effect, all this territory is mine under your own concession, but I now propose to you to investigate another claim I advance to a region held by you situated beyond the reputed limits which you formerly recognized as mine.

Should Virginia accept such a proposition, even if the proposed investigation might make it evident that the grant to Lord Baltimore was void *ab initio*; or that the present limits of the state of Maryland, although once acquiesced in by Virginia, were not the true boundaries called for by that grant, but that such bounds would greatly curtail the present possessions of Maryland and enlarge those of Virginia; still she would derive no benefit from any such result. Whereas, should this result be different, Virginia would suffer loss, without the prospect of acquiring in any conceivable event.

If Virginia had never advanced a claim to any portion of the territory now held by the State of Maryland; if Virginia had always admitted that the limits under which Maryland now holds this territory were the true boundaries called for by the charter granted to Lord Baltimore; the proposition made by the state of Maryland might wear the appearance of more equality. But when it is a matter of notorious history that Virginia denied the validity of the grant to Lord Baltimore the moment the existence of that grant was known to her; that she afterwards denied the truth of the

538 assertion that the boundaries of the domain now held by the state of Maryland were those called for by this grant, even supposing it to be valid; and that her subsequent recognition of the validity of the grant, and her release of right to any of the territory

then asserted by Maryland to be within its limits, were mere gratuitous acts, done by Virginia in 1776, to prevent discord and to secure the cordial co-operation of all the British colonies in the great struggle for their independence, then about to be commenced, impartial justice will not probably regard this attempt of Maryland to erect a new controversy upon the gratuitous concessions of Virginia, made to secure peace and harmony, as either liberal or even fair.

If Maryland believes that she desires no benefit from the concessions made to her by the constitution of Virginia, adopted in 1776, and is willing to rest her claim to the territory in question solely upon the charter granted to Lord Baltimore, in 1632, unsupported by these concessions, let her say so.

She will find Virginia ever ready to meet her at any trial of the issue that would then be tendered, which issue would, of course, involve the original validity of this charter, and the question as to the true limits called for by it. Or if Maryland (being unwilling to put in question the validity of this charter, or the truth of the assertion that the limits under which she holds the territory she now possesses, are the true boundaries called for by it,) chooses to fortify her title by relying upon the acts of Virginia; she ever willing to abide by her solemn acts, altho' they are merely gratuitous will meet Maryland upon the ground also, and will co-operate with her promptly, in delineating and marking the lines formerly recognized as the true limits called for by the charter referred to. But whatever Virginia may do in regard to it, she can never consider the proposition now made to her by Maryland, that Maryland shall continue to hold unquestioned all she now has under the gratuitous concessions of Virginia, and may be permitted, at the same time, to claim
539 more of Virginia, in opposition to these concessions, as either equitable or just. Supposing it possible, however, that the state of Virginia may be disposed to accept this proposition made to her by the state of Maryland, unequal as it has been shewn to be, I will proceed to examine the only question which it is intended to present. As this presupposes the validity of the charter granted to Lord Baltimore, and that all the territory which the state of Maryland now holds is certainly included within the limits called for by that charter. I shall not touch either of these subjects at this time. But I will confine my inquiries to the single question, do the boundaries called for by this charter, include *more* territory than Maryland now holds, and so sustain the clai*n* advanced by her to the region described above?

This question it is obvious can be determined only by a reference to the charter itself.

This instrument may be found in the beginning of the first volume of the laws of Maryland, revised and collected under the authority of its legislature, by William Kitty. The original is in very bad latin, of which the fidelity of the English translation there given, is probably open to as just criticisms as the purity of the latinity.

The subject of its first grant is, "all that part of the peninsula or

chersonese lying in the parts of America, between the ocean on the East, and the bay of Chesapeake on the West, divided from the residue thereof, by a right line drawn from the West, from the promontory of headland called Watkins point, situated by the said bay beside the river of Wighco, to the great ocean on the Eastern side (in plaga orientalis); and between that boundary on the South, unto that part of the estuary of Delaware on the North, which lies
540 under the fortieth degree of North latitude from the equinoctial, where New England is terminated." As the state of Maryland claims nothing in this quarter of Virginia —— beyond the boundary under which Maryland —— and as the view about to be taken of this subject, precludes any inquiry whether the boundary under which Maryland now holds is "the right" "line" here called for; it would be improper to make any other observation upon this part of the charter, than merely to say that it sets forth the reason why this grant was confined to the fortieth parallel of latitude. This parallel was the common boundary between New England and Virginia, as declared by the charter granted by King James the First, to the council of Plymouth, on the 3d of November, 1620. Therefore, beyond this parallel, the subsequent grant to Lord Baltimore could not legally be extended, as the grant itself here plainly declares.

Having thus disposed of the part of the Peninsula beforementioned, situated on the Eastern side of Chesapeake bay, the charter next proceeds to grant another territory, West and North of that bay; and to designate the boundaries of this also. In doing so, it uses terms the true of which is this: "And all that tract of land within the underwritten boundaries, viz: passing from the said estuary called Delaware bay, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the Pattowmack; thence inclining towards the South (*vergendo versus meridian*) unto the further bank of the said river, and following it where its Westward side (plaga occidentalis) looks to the South, unto a certain place called Cinquack, situated beside the mouth of the said river, where it disembogues into the aforesaid bay of Chesapeake; and thence, by the shortest line, to the aforesaid promontory or place called Watkins point."

The former part of this grant having plainly indicated the intersection of the fortieth parallel of latitude with the estuary of the Delaware as the point at which the *Eastern* boundary thereby
541 called for was to terminate; in describing the next or *Northern* boundary, it was indispensably necessary to begin at this point of intersection. Beginning there, if the course of this new boundary had been anywhere to the North of this parallel, it must have encroached upon the previous grant to New England; and if it had been to the *South* of that parallel it would have left to Virginia a narrow and useless jib between this new boundary and the fortieth parallel. To avoid either of these consequences, the course of the new boundary was required to be that of the parallel itself.

Therefore it is that the grant, in describing the new boundary, requires it to run from the said estuary, called Delaware bay, in a

"right line *by the degree aforesaid.*" Thus making the fortieth parallel of latitude (or the common boundary between Virginia and New England) the Northern boundary of the territory intended to be granted on the Western side of Chesapeake bay, as it had been already declared to be the Northern boundary of the part of the peninsula granted on the Eastern side of that bay.

In this boundary Virginia has no interest whatever, except as to its extent. The line thus called for does not constitute a common boundary between Virginia and Maryland anywhere; it was the common boundary between Maryland and New England, and is the common boundary between Maryland and Pennsylvania.

Therefore the only subject in which Virginia has the slightest interest in regard to it is where it ought to terminate; and its termination is plainly required by the grant to be the point of intersection of the fortieth parallel of latitude with the true meridian of the first "fountain of the river Pattowmack." There can be no doubt about this.

But a question here presents itself, what ought to be considered as "the first fountain of the river Pattowmack," which is called for by this grant?

The context supplies so many other indicia by which the
542 object denoted by these terms may easily be discovered, that it would be a subject of wonder how all of these should have been overlooked by the Maryland expositors of this instrument, if the argument upon which they seem to place their main reliance did not show the cause of this.

But when these expositors refer to the 22d section of this charter to prove that if any doubt exists as to the intent of its provisions, Maryland has the right to satisfy this doubt by bestowing upon the terms used such a construction as will give her the most land, it ceases to be a matter of surprise why the keen optics of some of these expositors have seen in the grant what is not there, and overlooked what is there.

According to the rule of construction which seems to find most favor in the eyes of such expositors, this 22d section (the like of which may be found in almost every modern royal grant of lands) holds out a bounty to *astutia* to mystify the meaning of words, in order to erect thereupon the jurisdiction of interest to decide in her own favor. From what code of ethics or of law such a notion is supposed to be derived, is not announced, but it is very certain that it finds no support *ratione scripta oel non scripta,* in either common justice or common law.

According to the opinion of the old crown lawyers of England, expressed at a time when the prerogative was regarded with more favor there than prerogative is now regarded anywhere, a grant made by the king, at the suit of the grantee, was to be taken most beneficially for the crown.

This opinion had some plausibility at least to support it. For as the sovereign was presumed to know nothing of the subject granted, except what the grantee had disclosed in his petition, this grantee, and not the king, was considered as the real *proferens* or pro-

pounder; and then, this rule was the mere application to a particular case of the just maxim of universal law in regard to the construction of all instruments that *verba fortius accipiunten contra*
543 *proferentem.*

For the purpose of excluding the operation of this harsh prerogative rule, a new clause was afterwards invented and introduced into the royal charters. The language of this clause affirmed that the grant was made "out of the special grace, certain knowledge, and from the mere motion of the king" himself.

So contradicting directly, by words at least, the former presumption that the king had no other knowledge of the subject granted than what the grantee had disclosed to him in his application; and thus leaving the grant open to a more liberal construction than it would have received from the crown lawyers if the prerogative rule had been permitted to apply to it in full force. But as these words excluding the rule of prerogative did not establish any other certain rule for construing royal grants, at least in terms, and as in such a state of things it was impossible to foresee what new rule of construction might be considered as legitimate by the subservient crown lawyers of that day, who were disposed to regard the kings of England as deriving their powers *jure divino*, or from some other source not better known, a clause similar to the 22d section of this chapter was invented and inserted in most of the royal grants of property—a *majori cautela* merely.

The sole object of both clauses was to apply the same rule of construction to royal grants, which was applicable to all other grants. This rule is well expressed in the maxim before quoted that *verba fortius accipiuntin contra proferentem.* This rule, however, being one of some strictness and vigor, is never referred to but as a last resort; and can never be relied upon until all other rules of exposition fail. Nor was it permissible even in the days when prerogative was at its meridian height, and when charters were required to be expounded most beneficially for the king, to clothe words with ambiguity in order to let in the prerogative rule of so construing them. But then, as now, all grants were required to be expounded "as the intent was at the time of the grant"; and to discover this
544 intent the construction "must be made upon the entire deed, and not merely upon disjointed parts of it." Guided by these lights, intelligence and candor must first investigate the subject, not for the purpose of finding a doubt, but of clearing it of ambiguity, if this may be avoided; and it is only when *such* judges cannot solve the uncertainty, that they are at liberty to refer to the rigorous rule as a last resort, *ut res magis valeat quam pereat.*

Then let an intelligent inquirer examine the terms used in this grant in a spirit of candor, honestly desirous to discover their signification. If, when he has found this, he is left in doubt whether the terms used were here employed in that sense, let him then search into each and every other part of the instrument, in the same spirit, to dispel his first doubt. And if such examinations do not give him reasonable assurance of the true intent and meaning of the grant, at the time it was made; then as a last expedient, let him adopt the

rule given by the 22d section of this charter, and give to the still ambiguous terms such a construction as will be most beneficial to Maryland. But let him never forget that he is but an interpreter and not the author, and that "*justies in verbis nulla est ambiguitas, ibi, nulla expositio contra verba fienda est.*" More than this even strict law does not require, and more than this justice cannot grant.

On prosecuting such an examination, the first question which naturally presents itself is, for what purpose were these ambiguous terms—"the first fountain of the river Pattowmack",—introduced into this grant? The answer to this question is readily furnished by the instrument itself; and in a way that no reasonable being can doubt of its truth. The immediate subject of that part of the grant wherein these words occur is the description of a line intended to be established as its *Northern boundary*. This line it had called for as a "right line." The point at which this right line was to begin, it had denoted as "the estuary called "Delaware bay," meaning
545 thereby the intersection of the fortieth degree of latitude with that bay. For the reasons before stated, it had determined that the course and direction of the right line, beginning at this point, should be the course and direction of that parallel; which course and direction it had required by the words ordaining that it should run "by that degree." All that then remained to be done to complete the description of this *Northern* boundary of the grant was to establish a certain termination of the right line, the beginning and direction of which had been so given. This the grant effects, by declaring the right line shall be extended, from this beginning, in the given direction, "unto (*usque ad*) the true meridian of the first fountain of the river Pattowmack." It is thus made obvious that the purpose of introducing these words into this grant was to fix and determine the end of the boundary, the beginning and direction of which it had given immediately before.

That this obvious purpose is also the *sole* purpose of introducing these words into the grant, will be very apparent, when it is observed that, this purpose being attained, no other mention is ever made of the meridian or fountain referred to; nor is any reference made to it afterwards in any part of this instrument. Indeed, so soon as a certain termination of the *Northern* boundary is thus established, the next subject of the grant is its *Western* boundary. This is required to proceed "thence;" that is to say, from the point of intersection of the parallel and meridian aforesaid; and "inclining towards the South, is to extend unto the further bank of the said river" Potomac. It is plain, therefore, that the meridian referred to is not intended to designate this new *Western* boundary, but as merely furnishing the certain means by which the termination of the *Northern* boundary might be fixed and made known.

The idea that this meridian is referred to as a new, and, of course,
the *Western* boundary of the grant, seems to be inconsistent
546 with it in many respects. If this charter had intended this meridian itself to be a boundary, after establishing the termination of the *Northern* boundary, by the intersection of the parallel with this meridian, it would probably have employed the same

terms, *mutatis mutandis*, which it had employed before as to the parallel, and would have said, thence "by the meridian aforesaid;" or thence "in a right line;" or by some other form of expression it would have denoted a meridianal line as the boundary designed. Instead of this, however, the grant calls for a line merely "inclining (*vergens*) towards the South;" and this mere inclination from the parallel, not to, (ad) but "*towards* (versus) the South," it declares to be for the purpose of finding in that quarter a natural object, "the river Pattowmack." To satisfy such a call, it is indispensably necessary to proceed to this natural object, called for as being in the Southern quarter. Thither the *Western* boundary must go, whether the natural object called for be found East or West of the meridianal line referred to, or even upon that meridan itself.

In the latter case, however, the meridian would not be followed because it was the meridian, but because this meridianal line would then chance to coincide with the direct line going to the natural object called for. Nay, it is very conceivable, that after having fixed the termination of the *Northern* boundary, in proceeding from this point, to satisfy the next call of the grant for a natural object, the grantee would have been compelled either to have retraced his steps along the parallel, or to have gone on with it beyond the limit just established for such a termination. Or if any departure from the parallel was required to satisfy the demand of the grant that the new line should incline "towards the South," an inclination towards the South of one single second of this degree, or even of a smaller fractional part of it than a second, would have sufficed to answer this purpose.

A reference to the condition of things at the time this grant was made, in disclosing the probable reasons why the very
547 terms found in it were employed, will well illustrate this last seeming paradox, and verify the truth of the several positions taken above, beyond all doubt, as is confidently believed. At that day, neither the parties to this grant, nor any other human being knew where the source of the river Potomac was, or whether it would be found North or South of the fortieth degree of latitude. The existence of this river was known, and its general course and direction for about an hundred and forty miles from its mouth upwards was also known. So far (that is to say to its first falls) it had been ascended and explored. But beyond this, no white man had then ever been; and the whole country West of this point, either towards the North or South, was truly *terra incognita*. The probable inference from these few *data* was that this river Potomac crossed the fortieth degree of latitude. The great width of it, not only at its mouth, but at the highest point to which it had then been explored, justified a belief that it penetrated far into the country. If it did so, and the general direction of its course from its mouth to its first rapids was continued, it was certain that it must cross this parallel. But whether the river did continue its course in the same general direction, was then a matter of uncertainty; and being uncertain in describing the intended limits of the grant, it was proper so to provide, as that it should have a certain

boundary, be the course of the river what might. But how was this to be effected?

One thing was very clear, that as the Potomac was a large river it must have many fountains, and that from each of these it would be easy to draw one certain meridian, which being a meridian must intersect the parallel of forty wheresoever any of these fountains might be situated, although no one certain meridian could be drawn from the great river itself. Hence in running out the *Northern* boundary of the grant, and establishing a certain termination for this boundary, instead of calling for the river itself, or any
548 of its fountains, neither of which might be *on that line,* the meridian of a fountain was designated as giving, necessarily, a certain termination of this boundary, let the course of the river, or the position of any of its fountains, be what it might in reference to the parallel.

Having fixed the intersectional point of the parallel and meridian, as the certain termination of the *Northern* boundary in this then unknown region, the next *desideratum* was a certain *Western* boundary for the grant.

The terminus *ad quem* of the Northern boundary would necessarily be the *terminus a quo* of the new or Western boundary *boundary;* but what should be the direction proper to be given to the line beginning at this point?

If this Western boundary should be made to run "by the meridian" to the fountain from which that meridian had been required to be drawn, and if that fountain should chance to exist Northward of the parallel of forty, as was then probable, every inch of the new line would have been within the territory of New England. But upon this territory, as has been seen, this charter was intended to avoid any encroachment. Therefore it was required that the new or Western boundary, in proceeding from its beginning on the parallel, should not run towards the North, but should incline towards "the South." If, however, the new Western boundary had been required to follow the meridian "towards the South," then it was very certain that to meet the fountain from which the meridian was directed to be drawn, should that fountain chance to exist Northward of this parallel, the meridian must pass around the whole globe. In the latter case, it would have been absurd; and in the former plainly inconsistent with the manifest intent of the grant, to have required the direction of the meridian to be that of the intended new or Western boundary. Therefore the charter most cautiously abstained from any such requirement.

But if the Western boundary departed from a meridianal line, the precise bearing of any object in this then unknown region,
549 from the point on the parallel where it was intersected by this meridian, was neither then known or could be known; and if an arbitrary bearing from that point had been given to the new line by mere conjecture, to what point a line so directed might lead, or what might be the very probably absurd or inconvenient effects it might produce, was then a matter of equal uncertainty. Hence to avoid such possible and even probable consequences, the charter

most wisely called for a known natural object as the termination of the new line, and by so determining both the beginning and end of this line thereby necessarily determine its true course and direction. Thus certain limits were established for the grant in this *terra incognita*, and without encroaching upon the territory North of the fortieth parallel, the certainty of which limits could not have been established by any other means than those used.

To illustrate these several positions, let every conceivable case be referred to, and see how the grant would apply to each of them. The river Potomac either crossed the fortieth parallel, or it did not—but which ever of these categories was true, the fountains of the river, all, some, or one of them, must be found either Northward of this parallel or southward of it, or directly upon it. These embrace every condition that can be imagined. Then let it be supposed, first, that the Potomac had been found to cross the fortieth parallel, and that some particular fountain, say the first, was found situated to the *West* of the point of intersection of the parallel and the river which crosses it, what would have been the construction of the grant then? The boundary would still have commenced at "the estuary called Delaware bay."

(Four pages of the original manuscript are wanting.)

or could be that fountain called for by this grant, as the first "fountain of the river Potomac." But granting this, (which cannot be proved,) it surely ought not be regarded as evidence of much scepticism to doubt the truth of the conclusion, which would infer
550 the name of a river, from the fact of its having a nameless first fountain, whether this fountain may be situated most to the West or East, North or South. Whatever "the horoscope" of this grant may indicate, its words plainly shew, that the terms first fountain of the river Potomac, do not denote the most Western, but the nearest fountain of that river to the point of departure, and to the line whose termination the meridian of this fountain was intended to fix. If the view of this subject now being presented did not preclude it, this would be at once proved. But suppose this not to be so, and that some other of the many fountains which such a river as the Potomac must have, is denoted by these terms; still, as has before been shewn, this first fountain, wherever it may be found, is not referred to as a boundary, but as the spot from which a meridianal line might be drawn, to intersect the fortieth parallel, and as to mark the termination of a boundary, the beginning and direction of which was already given. Having answered this purpose, both the meridian and the fountain from which it was required to proceed were *functus officio*. No other mention is made of either; but the next boundary is directed to proceed from the point of intersection made by the meridian and the parallel, not to the said fountain, but to the further bank of the said river. So that the question is not what or where is the fountain, but what and where is the river, here plainly contra-distinguished from this fountain.

To say that this fountain is the river called for, is not only a solecism, which would confound the whole with one only of its

many parts, and this the smallest, but is to assert a proposition absurd in itself and directly contradictory of other calls of this grant. It is absurd: because, by tracing the Potomac to this single fountain, and calling that fountain the river, unless there are two Potomacs, this fountain must be the only river of that name. This river would then have but one fountain. Now what rational being ever applied the relative *first* to distinguish any object of which there was but one. The term last would designate such an object
551 equally as well.

Such a construction is also plainly contradictory of the other calls of the grant it professes to expound; and this in many particulars—

1. The object called for is a fountain. When this is left, it is a mere spot, from which only a single meridian can be drawn. During your short absence, however, this spot is magnified into a river, from which millions of meridians might be drawn, if required.

2. The fountain called for being considered and necessarily so, as an object indefinitely small, a mere point, having position but no significant magnitude, it could not have sides or significant boundary; yet the river called for by this grant, is not only called for by the name of a river, which must have sides or banks, but the grant expressly requires the boundary to proceed "unto its *further* bank." They who can split a hair between its West and Southwest sides may, perhaps, tell what is the "further" bank of such a fountain. In doing so, however, they will probably find it difficult to gain credence in the opinion that such a minute space (if space it may be called), was ever made the subject of description in any royal grant of millions of acres.

3. This "further bank" of the river called for, is described in the grant itself, immediately after it is therein mentioned, as the *"Westward side," plaga occidentalis.* Nor it would not be possible to find the *Westward* side of anything while going "towards the South," along the meridianal line *from* the North, that is from the fortieth parallel of latitude. In such a direction you can expect to find a Southern side only.

4. Arrived at the further or Westward side of the river, the grant requires that this *i. e.* the further or Westward side, should be followed where it looks to the South, thereby plainly implying that the object described had two aspects, one to the North and the other to the South; and so shewing the impossibility that the most *Western* fountain of the river could be here intended. Besides this,
552 however, it would be folly to expect that the *Western* side of the Southern branch of any river or fountain (if a fountain could be said to have sides,) could "look to the South." If it be a Southern branch, in its ascent it must look *Southward*, therefore in its descent it must look *Northward*. And any one who will take the trouble to examine a map of the country, will find that the Wappacomo, or South branch of the Potomac (as it is now called), instead of looking "to the South," looks to the North from its source to its mouth.

5. The grant promises, that by following this further or Westward

bank of the river called for, where this bank looks to the South, it will lead you "unto a certain placed called Cinquack, situated beside the mouth of the said river, where it disembogues into the aforesaid bay of Chesapeake." It would be ridiculous, therefore, to suppose, that the side or bank so referred to could be that of a mere fountain in the Alleghany mountains, and impossible that the further or Western bank of the river itself, if that river be the *Wappacomo* or South branch of the Potomac could ever lead to Cinquack. This place is well-known, and, indeed, admitted to be on Chesapeake bay, at the Southernmost of the two points made by the confluence of the river Potomac with that bay. The terms used in the grant indicate plainly, that you must not *recross* the river but continue to follow the same side or bank at which you had already arrived, that is to say, the Westward side. If this is done, however, to reach Cinquack you must either recross the South branch, or to avoid doing so must cross the Potomac itself twice.

These considerations, it is believed, must demonstrate that no fountain of the *Wappacomo*, or South branch of the river Potomac, can be the fountain called for in this grant as "the *first* fountain" of that river; and that the *Wappacomo*, or South branch itself, cannot by any possibility be the river intended by the grant as that unto the further bank of which it requires the boundary to proceed in passing from the fortieth parallel of latitude. If this be so, there is an end put to this controversy. For as the claim advanced by the State of Maryland to the territory in question rests solely
553 upon the assumptions that the most Western fountain of the South branch of the Potomac is the fountain called for in the charter as "the first fountain" of the river Pottowmack, and that this South branch is the river next required thereby, when the error of both or of either of these assumptions is proved, the claim itself must be abandoned.

But as it is at least possible that the State of Maryland, when excluded from these positions, may be disposed to assume some other fountain and some other stream, within the territory of Virginia, as the true objects called for by the charter to Lord Baltimore, with a view of preventing this, if possible, I will extend this examination further. In doing so, I shall not endeavor to shew what is the first fountain of the river Potomac, called for by this charter, or to designate the particular point on the further or Westward bank of the river so called, which must be sought for and determined as the point required by this instrument. To do this I should be compelled to shew that Virginia is entitled to a much larger portion of the territory now held by Maryland than Maryland has ever claimed of that held by Virginia; and this must not be done *now*. In the year 1776, Virginia, "when in her first love as a sister state," as it has pleased Maryland to say, voluntarily and gratuitously released to Maryland all right to any territory she then held as being within the limits of this charter. If Virginia had ever manifested any wish to avoid this release, or had ever made any boast of the motives which prompted her to give it, she might have merited such a taunt from her sister state. But although Virginia may feel the taunt of Mary-

land as both undeserved and unkind, even that cannot provoke her to endeavour to avoid any of the acts, however ungraciously they may be regarded by those whom they were certainly *intended* to benefit. This release is in full force, and precludes any attempt on my part to shew that Virginia is *now* entitled to any of the possessions which Maryland *then* held. But although it would be useless now to prove where the true boundary called for by this charter
554 must be sought for and will be found, it will not be useless to shew why and where an erroneous boundary was regarded by both parties as the true boundary. This therefore will now be attempted.

Where a named river, or any other natural object, must be sought for, and may be found, is not, as has been before stated, matter of argument and deduction, but of fact; and the truth of facts can only be established by evidence. To evidence therefore I will refer:

1. The particular region now called Virginia was discovered in 1607. The next year (1608) the justly celebrated Captain John Smith, who may properly be considered as the founder of the colony of Virginia, set out from Jamestown on an expedition to explore the then unknown Cheasapeake bay.

This he did, from its mouth to very near the head of that estuary. On his return from towards the head of the Chesapeake, while descending this bay along its Western side, he "fell (in) with the river Potomack," and ascended it "so high as we could with the bote"—that is to say to its first rapids, now found a little above the city of Washington. Some time after his return from this expedition, and after exploring the country in various other directions, meeting with a very serious accident, Captain Smith was compelled to return to England. While in England he published his "General Historie of Virginia, from its first beginning, An: 1584 to this present, 1626." This work was accompanied with a map of the country. They were published together in London in 1629, and constituted the only authentic topographical description of Virginia extant in 1632 when the charter was granted to Lord Baltimore.

In the map which accompanied this history the extent of the region that had been then explored, either by the author himself or by any other white man, is distinctly marked and distinguished from the residue of the country, which is laid down merely from the relations given by the aborigines.

555 This map, so far as it designates the positions of places which the author had visited himself, will be found singularly accurate, even at this day, especially when the means he possessed of attaining absolute certainty are considered. The names of the places mentioned in the charter to Lord Baltimore, and the orthography, show conclusively that this map of Smith's was the guide to which those concerned in this charter, as either grantor or grantee, must have had reference in describing the territory intended to be given and received, and when it is recollected that this was the only topographical description of Virginia then extant, it is certain that this map must have been their sole guide.

An inspection of this map will show that the river Potomac is

there represented as a single stream, receiving no tributary above the point to which it had been actually explored, until it has ascended almost to its sources.

It is there divided into two branches, by the confluence of which the river itself is formed. The more Southern of these two branches is represented to proceed from the point of confluence in a direction nearly West; and of course could have had no Westward side as required by the grant. Therefore, if either of them was considered as the river itself, it must have been the more Northern branch, which has a Westward side, that looks to the South; and if this side be regarded as the bank of the river Potomac itself, it will lead to Cinquack without re-crossing the river, according to the requirements of the charter.

This circumstance, together with the very near approach of this Northern branch to the fortieth parallel, seems to indicate that if either of (these) branches was then regarded as the river itself, it must be the Northern branch. It may be that neither of the two branches was regarded as the Potomac, but as being mere tributaries of this river formed by their confluence; but if it is insisted
556 that the river must continue up one or the other of them, the more Northern branch alone will answer all the calls of the grant; and therefore, the name of the Potomac must be given to this *Northern* branch.

When it is recollected that the delineation in this map of the Potomac, above its first falls, was not made from any personal observation of the author of the map, or of any other white man, but from information derived from the aborigines; and that the Powhatans (the aboriginal inhabitants of this quarter) were ignorant of the country beyond the Blue Ridge, which was then held by a great nation, Massawomecks, and with whom the Powhatans were always at war; it will occur to every one, as very probable at least, that the river Potomac represented in this map, as confined to the country Eastward of the Blue Ridge.

This opinion will be confirmed by the fact that the distances given in this map from the falls of the Potomac to the point of confluence of its two branches, and from the falls to the mouth of the river at Cinquack, and to the Chesapeake bay near the mouth of the river, distinguished in the map as "Bolus river," (now the Patapsco,) shew very plainly that the confluence of the two branches was then believed to be much nearer to the falls than these were to the Chesapeake bay; and that this confluence was at a point above the falls not one-third of the distance between the falls and the mouth of the river, all of which latter distance had been then actually explored. If so, the more Northern of the two branches, which is represented as rising very near the fortieth parallel, must be the stream now called the Monocasy; and the other branch must be that descending from the Blue Ridge, now known as the Potomac itself, but which seems to have been formerly called the *Quiriough*.

It is a circumstance worthy of observation also that when the mountains were first discovered, which was not until 1653, as is shewn by the most certain evidence; and when the passage of the

Quinough or Potomac through these mountains was then ascertained, no doubt was entertained, either in Virginia, Mary-
557 land, or in England, that of the two streams by whose confluence the river Quinough or Potomac was there made, the Cohongoruton or North branch, and not the Shenando or South branch, ought to be considered as the Quinough or Potomac itself. Nor is this doubted by anybody, even in Maryland, to this day. So that if the confluence of the two nameless branches, represented in Smith's map, be even transferred from the junction of the Monocasy and Quinough to that of the Cohongoruton and Shenando, at what is now called Harpers Ferry, the same result will be exhibited viz: that the Northern and not the Southern branch of the main river, was intended as the boundary of the grant: and this according to the concession of all the parties interested at that time.

The effect of this evidence seems to be that when the grant to Lord Baltimore was made, in 1632, a nameless stream, then known to rise in the Northwestern quarter, and believed to do so very near the fortieth degree of latitude, offered itself as leading necessarily to the first fountain of the great river, then called the Patowmeck, which would be approached in passing Westward from the estuary called Delaware bay, in a right line by the degree aforesaid, and therefore as the most convenient termination of the Northern boundary of this grant. But as the supposed near approach of this nameless stream to the fortieth parallel left it uncertain whether it rose to the North or to the South of the parallel, the meridian of the fountain and not the fountain itself, was called for as giving the termination of this boundary.

Not knowing in what precise direction from this point the river Patowmack might be found, but knowing that it would be found somewhere South of the parallel, and that its general course upwards was from the Southeastward to the Northwestward quarter, in prescribing the next or Western boundary of the grant, the direction given in it, was to *incline towards the South*, and to proceed unto the further bank of the said river. This "further bank" would necessarily be the Southwestward bank of the river, which would, of course, look upwards to the North, and downwards to the
558 South. Therefore the grant truly described it as (*plaga occidentalis*) not West, but Westward side; and directs this Westward side to be followed where it looks to the South. "And, to render this description certain to every intent, the grant further directs that this Westward side of the river should be followed, where it looks to the South," unto a certain place called Cinquack, which place the grant described as it is represented in Smith's map, as situated beside the mouth of the said river where it disembogues into the aforesaid bay of Chesapeake. This description would indicate the stream now called the Monocasy as the nameless Northern stream delineated in Smith's map; and the most Eastern fountain of that stream as the first fountain called for in Lord Baltimore's grant. It would also indicate the point of confluence of the Monocasy and the other nameless Western stream, believed to be afterward known as the Quinough, as the point on the river Potowmack nearest to the in-

tersection of the fortieth parallel with the meridian called for by this charter. And it would indicate a straight line drawn from this point of intersection to the further or Westward bank of the Patowmack at the junction of the Quinough and Monocasy—the two tributaries by whose confluence the great Potomac was there first formed as the true Western boundary of this grant.

More than twenty years after the date of this charter to Lord Baltimore, when the country situated upon the Potomac above its first falls was explored Westwardly to the mountains, it was discovered that the stream now called the Monocasy was but a tributary of the principal river. To this last, the first discoverers, who came from the East, where the river formed by the confluence of these two streams was always known as the Potomac, gave the latter name, although the river above the confluence of the Monocasy was then called the Quinough. If the first discoverers, instead of ascending the river towards its sources, had descended towards its mouth, the probability is that the name of Quinough would have supplanted that of Potomac; but, as the reverse was the case, the name of the Potomac, which the river bore below the junction of its two tributaries, was continued to the principal of these above their confluence. It was many years, however, before the name of the
559 Quinough became utterly extinct; for, as late as 1736, the river Potomac as oftentimes mentioned as the Quinough or Potomack.

The name of the Potomac being thus applied to the river, even beyond the Blue Ridge, and the river still inclining, even there, toward the fortieth parallel, it was but natural to suppose that the first fountain of *this* river, then supposed to be that called for in the charter to Lord Baltimore, must be sought for by following the more *Northern* of its two tributaries. This region being then unsettled, the grant to Lord Baltimore was supposed to cover the territory West of the Monocasy, and North of the river then called the Potomac. This erroneous opinion was confirmed by the next piece of evidence to which I shall refer.

.2 In 1673, King Charles the Second, by his letters patent (containing clauses precisely similar to those in the charter to Lord Baltimore, which are so much relied upon), granted unto Henry Earle, of Arlington, and Thomas Lord Culpeper, baron of Thorsway, "that entire tract, territory, region and dominion of land and water, commonly called Virginia," not content with this sweeping grant.

Tazewell Taylor to Gen'l Wise, Enclosing Papers Prepared by Gov. Tazewell.

NORFOLK, *April 18th*, 1871.

MY DEAR SIR: Mr. Loyall will hand you a manuscript of Gov. Tazewell relative to the boundary between Virginia and Maryland, recently found by them among his papers, and which, altho' incomplete and without date or signature, but in his own handwriting, the ladies have requested me to send you for examination, hoping it may be useful to you and associates in the boundary commission.

From the fact that a letter of Mr. McDonald's was with the papers, it is probable that it was prepared at his request.

Please retain it as long as you wish and return it.

560 Yours, very sincerely,

TAZEWELL TAYLOR.

Hon. H. A. Wise, Richmond.

A. W. McDonald to Gov. Tazewell Requesting an Interview.

NORFOLK, *Dec'r 27th*, '59.

Gov. L. W. Tazewell:

If Gov'r Tazewell's health is such that he would take an interest in imparting his varied and valuable information relative to the (yet) unadjusted boundaries between Virginia and Maryland, the undersigned (commissioner on behalf of Virginia), would deem it his duty, to seek an interview with, and avail himself of, the enlightened and matured counsels of Gov'r Tazewell upon the important questions which present themselves as the basis upon which any adjustment of the differences between the two states must rest.

If the desired interview will in no wise discomfort Gov'r Tazewell, any hour of (to-day), he will indicate, for it shall be observed with pleasure, by his respectful and ob't s'v't,

ANGUS W. McDONALD.

Gov. Floyd to Pres't Jackson.

VIRGINIA, EXECUTIVE DEPARTMENT, *May 14th*, 1832.

SIR: By a resolution of the general assembly of this commonwealth, I have been requested to procure from the government of Great Britain, authentic copies of sundry papers now on file in the archives of that government, which will be useful to Virginia

561 in a controversy about to rise with the state of Maryland relative to our Northern boundary.

By the terms of the resolution, I have been authorized to appoint an officer to collect such testimony as may be useful to us in the proper adjustment of that unpleasant claim.

In conformity with the power vested in me, I have appointed Charles James Faulkner, Esq., a commissioner on the part of Virginia to perform that duty.

The object of my addressing you this letter which will be handed to you by Mr. Faulkner, is to ascertain whether the records which are wanted can be procured through the agency and facilities of the Federal government. If so, Mr. Faulkner will furnish your secretary of the department of state will all the necessary memoranda and references which will enable the American minister at the Court of St. James, to procure them without trouble or delay.

With a hope that this request may not be considered burthensome to you, I have the honor to offer you

My respectful salutation,

JOHN FLOYD.

His Excellency Andrew Jackson, president, &c.

Edw. Livingston to John Floyd.

DEPARTMENT OF STATE, WASHINGTON, 18*th May*, 1832.

To His Excellency, John Floyd, Governor of Virginia.

SIR: The president has referred to me your letter of the 14th May 1832, with directions to point out what in my opinion would be the most advisable mode of obtaining for the state of Virginia copies of the papers relative to its Northern boundary, from the colonial office in Great Britain.

562 From the information given to me by Mr. Faulkner, it appears that all those papers cannot be so specifically designated as to enable the officer in whose custody they are to find and give copies of them. If they could be designated, nothing more would be necessary than to transmit from this department a descriptive list of them to our charge d'affairs at London, with directions to ask from that government that copies should be furnished. This would, I have no doubt, be promptly complied with.

I also understand from Mr. Faulkner, that although all the papers cannot be sufficiently described, yet many of them can. Whether the production of these last might lead to such a knowledge of the others as would enable you to designate them also, you best will be enabled to determine. If this were probable, at two or more successive operations, all might be procured that the state requires.

If you do not think this probable, the better course would be to send on an agent to London, who, under the direction of Mr. Vail, might acquire from the office having the custody of the records such information as would be necessary to attain your object. Not that I believe he would himself have liberty to examine the records, but that every facility would be afforded to his research by the direction of the government.

In either of these cases, I am directed by the president to say, that the necessary directions will be given to Mr. Vail by this department to aid, by his official application, the attainment of the documents required by the state of Virginia; and if we should send out a public ship about the time your agent intends to go (if you send one), that a passage will be afforded him. But it is necessary to add, that there are no funds at the disposal of the executive out of which any of the expenses attending this business can be defrayed.

I have the honor to be, with great respect,

Your most obedient servant,

EDW. LIVINGSTON.

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563 Letters and portions of letters without date, address, or signature, in the handwriting of Gov. Tazewell, relating to the boundary question.

C. E. SNODGRASS.

(This, to the mark on third page, appears to be a fragment of a letter from Gov. Tazewell to the Governor of Virginia, touching his authority to negotiate upon the boundary question.)

In acknowledging the receipt of your excellency's letter of the 15th inst., justice to myself requires that I should promptly correct a misapprehension which you seem to entertain, as to the doubt expressed in my last, in reference to the extent of your authority to enter into any new negotiation upon the subject of the boundaries of our two states. In expressing this doubt, I certainly had no idea of questioning your authority for giving the invitation to do as you suppose, But merely to call your attention to the fact, that even if this invitation should be accepted by those who alone had power to accept it, the purposed negotiation might be prevented, or its consummation procrastinated, by a defect which I thought it possible might have escaped the notice of your excellency. You have assured me that I was wrong in this supposition, however, and it is not for me to pronounce, at this time, upon the sufficiency of your arguments to shew that your own construction of your own powers ought to be regarded as correct. Having said this, perhaps there is no necessity for adding more, especially as your excellency has informed me, "that unless provision" has been made in our act of March 5th, 1833, for the very special and possibly unnecessary umpirage prescribed by your resolutions of 1831, in case of the disagreement of the commission, you have no authority to continue negotiation upon the subject further. The act referred to contains no such provisions certainly; it will be long, I hope, before the State of Virginia will ever consent to submit an undefined proposition concerning her territory to any arbiter nominated to her,
564 and with this declaration of your excellency, it would be useless to say more upon this subject, than to repeat the assurance I have formerly given you, that I will lay before the next general assembly of Virginia the whole correspondence between us, and submit to them the propriety of acceding to this peremptory *sena qua non*.

In conclusion, I will take the liberty of saying to your excellency, that when I availed myself of the occasion presented by your first letter, while announcing to you my own want of authority to conclude anything in regard to its subject that might be obligatory upon Virginia to propose a frank, informal correspondence between us in reference to that matter, I was actuated by no other wish than an ardent desire to become the instrument of facilitating the termination of a controversy which, I believe, then would not be continued if its precise object was once correctly understood. To effect this, obvious considerations seemed to me to suggest the avoidance of any reference to past proceedings that had been employed in characterizing the conduct of one of the high parties to the controversy, especially as the State of Maryland seemed to concur in this opinion by repealing the resolutions con——

Your excellency thinks differently however, and while tendering me the late resolutions of your legislature repealing those adopted in 1833, you refer specially to the proceedings which accompanied these resolutions to shew that the opinion of that body which adopted these proceedings concurred with yours in this particular. I will forbear any other remark upon this than to say that I regret it.

(From this point to the end of the 4th page is in reference to bounty lands, and has nothing to do with the boundary question.)

I have the satisfaction to inform you that before the 1st day of September now last past, all the claims for military bounty land which had been exhibited to the executive were disposed of finally by that body. I have been since informed officially, through
565 the secretary of the U. S., that the warrants filed exceed the appropriation of 650,000 acres made by Congress in the act of March 3d, 1835, by 94,599 acres.

This excess, as the register informs me, does not comprehend other allowances made by the executive of this commonwealth, upon which no warrants have yet been granted by the register, because none shewn to be properly authorized to receive such warrants have applied to him for the same. Since the 1st day of September last, a few additional claims for military bounty land have been presented; upon none of these, however, have we yet proceeded to act; nor, under the circumstances stated, shall I feel myself at liberty to act hereafter unless directed to do so by some resolution of yours.

Your attention is therefore again invited to this subject. There is no reason to doubt that most of the officers of the government of the U. S. view this subject in the same light in which I have here presented it; but being mere executive officers, bound to carry existing laws into execution, each at his own peril, legislative enactments are requisite to protect these officers, and to cause the laws of the land to conform more exactly to the objects of the constitution than they now do probably.

Your letter of the 31st ult'o, the receipt of which I have now the honor to acknowledge, contains some remarks to which I am reluctantly constrained to reply, notwithstanding your declaration that there is no necessity for any further correspondence between us on the subject to which it relates.

You say that I have declined making any exposition of the Virginia act of March 5th, 1833. I am not aware that any such exposition has been sought by your excellency in any of the various communications with which I have been favored by you; nor that any doubt has ever been entertained by you as to the intent and meaning of that act. It is true, that in your letter of the 15th ult'o, you informed me that unless it had made provision for the umpirage proposed in case of disagreement of the commissioners, you had
566 no authority to continue negotiation upon the subject, or to appoint — to meet those appointed by Virginia. But even if this information was intended to intimate any doubt on your part as to the character of the act in this respect, this doubt must have been removed by the prompt exposition I then gave you, in stating that the act contained no such provision certainly A most careful re-examination of all our correspondence does not now furnish me with an intimation of any other date stated by your excellency. Nay, so far from containing the expression of any wish, for any explanation on my part, your letter gave me distinctly to understand that you did not consider me as empowered to make any authorized explanation on the subject.

Your excellency corrects an error into which you suppose I have fallen, in considering your submission of the proposals contained in the resolutions adopted by your State at the December session, 1831, as a peremptory *sine qua non;* and you inform me that your sole object in referring to these proposals was but to shew the extent of your powers. Now so far as Virginia is concerned in the matter, it is of little consequence, for what reason this preliminary to negotiation was dictated to her. In any — the acceptance of terms presented constituted a condition precedent to any negotiation. If Virginia had ever expressed an earnest desire to Maryland to close and finally adjust a question pending between them by amicable negotiation, Virginia certainly would have no cause to complain of Maryland for annexing to her acceptance of such a proposition, any condition she might think proper. But when it is not Virginia, but Maryland, that gives this invitation, the annexation of any condition as preliminary to that which she has invited, is a novelty at least, whether this condition be prescribed by Maryland directly, or results from the nature of the powers with which she has clothed her agent.

The peculiar character of the condition thus sought to be prescribed we also claim some notice. Virginia has in vain
567 called upon Maryland to state to her precisely what it is she claims, and upon what foundation her claim rests; (*except in the most general terms.) Without answering these questions, Maryland says to Virginia, I propose to submit this yet unknown question, involving unknown interests, to the umpirage of an unknown arbiter, who is to be governed by no prescribed rules, and may be guided by any unknown evidence and unknown argument hereafter to be offered.

(This appears to be a letter from Governor Tazewell to the Governor of Maryland, most probably. It is without date or signature.)

Your excellency supposes such a proposition to be countenanced by precedents to be found in the Diplomatic History of the United States. If this history, or that of any other State, either ancient or modern, furnishes any example like it, I am uninformed certainly where it may be found.

You describe the proposition also as equal and reciprocal. But when the situation of the two high parties is considered, it would be difficult to shew in what the reciprocity consists; and as to its equality, so would be a reference to mere chance. It is not usual, however, for states either to propose or to accept such an umpire. Something more than equality and reciprocity (if that could be found here), is generally considered desirable in the establishment of any forum. And Virginia would pay but little regard to her own character for either integrity or intelligence, if she was prepared to submit any and every claim that might be preferred against her to an unknown umpirage, presented to her by the claimant before the precise nature of the claim has been announced, or its character defined.

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*It is uncertain at what place these words were intended to be inserted.

Your excellency expresses, and I doubt not feels a desire to see this controversy terminated, by any fair, reciprocal and
568 feasible plan which Virginia may propose. But it will at once occur to you that Virginia is precluded from claiming anything of Maryland, and until Virginia is informed of the precise nature of the claim advanced against her, and of the proofs and arguments to sustain it, she can form no just idea of the nature of the demand, and is so incapacitated from suggesting any plan for its adjustment.

(Though written on detached scraps of paper, pages 9 and 10 are evidently a continuation of the foregoing letter.)

If Maryland is content to rest her claim to the territory in question upon the recognition of her right made by Virginia in 1776, Virginia is willing to abide by that recognition still. But she never can consent that Maryland may retain what she possesses in virtue of this recognition, and then ask for more under a title adverse to it, and in opposition to its admitted signification. It is with Maryland to select the ground upon which she chooses to rest her claim, and Virginia—will controvert. But she cannot in reason trace its foundation to two contradictory sources, claiming so much under the concession of Virginia, and so much more against that recognition. One or the other of these sources of her title Maryland must abandon, if they be in conflict with each other; and that they are in conflict will be obvious to all when it is seen that the terms used in the concession made by Virginia in 1776 refer expressly to the territory then possessed by Maryland which had been theretofore claimed by Virginia, and not to territory then held by Virginia and occupied and claimed by Virginia as her own, while the grant made to Lord Baltimore in 1633 could not by any possibility have referred to his antecedent possessions or to the claims of Virginia afterwards covered by that grant itself.

If the grant to Lord Baltimore covers the territory possessed by Maryland in 1776 and more, the recognition then made by Virginia is of no avail to Maryland, but the better foundation of her claim would be this grant.

569 If the concession made by Virginia in 1776 comprehends more than the grant to Lord Baltimore ever covered, then the better title of Maryland would be derived from this recognition; and if both the grant and recognition cover the same region throughout, it is now of no consequence to either Maryland or Virginia to which of these sources the title of the former is traced, as in either case the result will be the same. It would now save much discussion which may very probably prove to be unnecessary, if Maryland would make her election under which source of title she thought proper to rely. But as this is not done, both grounds must be examined.

So I will begin with the grant to Lord Baltimore as the elder, if not the better title.

The claim asserted by the state of Maryland to the territory in question she derives from a grant made by King Charles the First, to Cecilius Calvert, Lord Baltimore. This grant bears date June

20th, in the 8th year of that prince's reign, 1633. Within the boundaries called for by it, the territory in question is said by Maryland to be included. It is conceded on all sides that whatever may be the true limits required by this grant, the whole comprehended by them is but a small part and parcel of a much larger region, previously granted by King James the First, on the 23d of May, 1609, to a company incorporated under the name of the treasurer and company of adventurers and planters of the city of London, for the first colony of Virginia. Therefore, unless the limits of the grant to Lord Baltimore includes the territory in question (now claimed by the state of Maryland, she must admit that territory to belong to Virginia, as being comprehended confessedly within the bounds of this her more ancient charter. In this view of the subject two questions would naturally present themselves. Did the grant then made to Lord Baltimore really include the territory in question? Did the king of Great Britain enjoy the legitimate power to carve any portion of
the territory granted to Lord Baltimore in 1633, out of the
570 greater territory which had been previously granted to the
colony of Virginia in 1609, by a former sovereign of that empire, and if such power existed? If the first of these questions was now open for discussion, it might be affirmed confidently, perhaps, that no king of England, or of Great Britain since the enaction of the magna charta had possessed in virtue of his mere prerogative, the legitimate authority to grant to one any freehold or franchise which the crown had previously granted to another.

Such an assertion would apply with great force to a case like this, where a body of adventurers had been tempted by the promise of the rights and privileges given to them by the provisions of a liberal charter, to embark in the hazardous undertaking of founding a colony in a new world, when, by the establishment of which colony, they were assured by this charter, that they, and their descendants, should then have and enjoy all the liberties, franchises and immunities of British subjects abiding and born within the limits of England. In that case also it might be contended with equal truth, that the grant made to Lord Baltimore in 1633, was confined to a portion of America, then uncultivated, and occupied by savages, having no knowledge of the divine being, *in partitus America — et barbaris nullane divini* —, such a grant could not possibly have been designed to comprehend all the territory included within its bounds at the date of this grant. A portion of this territory had been that already settled, because it was then occupied by British subjects who derived their title to the same, from the then existing government of the colony of Virginia, within whose acknowledged limits it then was.

Our ancient records shew that so early as February 163½, the isle of Kent, now called Kent island, in the state of Maryland, was not only settled and occupied by the colonists of Virginia, but that the inhabitants of that plantation then enjoyed and exercised the privilege of sending a burgess to the grand assembly of Virginia; and our statute book contains several acts of this assembly passed both before and after the date of the grant to Lord Baltimore, whereby

the trade of the isle of Kent was regulated. But these ques-
571 tions it is readily admitted are not now open to discussion. they were settled very many years since by the king himself, upon grounds approved by his council, the judges; and although, to the colony of Virginia, the determination of the sovereign was then unsatisfactory, and became the subject of great murmuring and complaint; yet Virginia had no means in her power which might have been employed consistently with her loyalty to oppose the decision. She therefore reluctantly yielded at first to the force of this authority by which the determination was made, but afterwards, in 1776, the very act by which she assumed sovereignty and independence, she voluntarily ceded, released and forever confirmed to the people of Maryland, all the rights of property, jurisdiction and government, and all other rights whatsoever, which had been claimed by Virginia in the territory contained within this charter, granted to Lord Baltimore, whereby Maryland was erected into a British colony. The commonwealth of Virginia feels no wish to impair the obligation of this concession, then voluntarily, tho' gratuitously, made by her, so far as she is concerned.

Virginia is still willing that the State of Maryland should retain every thing which is therein granted or renounced. But, whilst thus ready to relinquish again, if necessary, the right, which she might properly assert, to any portion of the territory ever occupied, held or until lately claimed by Maryland, under the grant to Lord Baltimore, Virginia cannot regard it as either generous or just that the state of Maryland, to secure a title to what it possesses, should rely upon the voluntary and gratuitous concessions made by Virginia in 1776, and then, to enlarge these possessions, should assert a title unconnected with this concession, and certainly, to its meaning, as well understood by both parties at the time the concession was made.

(Apparently a portion of the charter to Lord Baltimore.)

Totam illam partem peninsulæ sive chersonise janieutes en partibus America inter oceanum ex oriente et serium de Chesapeake ab occedente a residuo ejusdem per rectam lineam a promontorio seve capite tena oceanio Watkins point juxta sinum
572 predritum prope fluvium de Wigheo scituato ab occidente usque ad magnum oceanum in plago orientati duclam devesam et inter melam ellam a meridie usque ad partem ellam estuarie de Delaware ab aqulone quæ subjacet quadragesimo gradree latitudinis septentionatis ad equenoctiate ube termunatis Nove Anglia totuonque illiuv tena tractiem infer melas subscriptas transciends a decto estuario vocato Delaware bay recter linea per gradum predictum usque ad verium meridianum primi fontis flumeous de Patowmack demde vergendo versus meridium ulteriorem dule fluminis repam et ceru sequendo qua plago occidentatis — meudeonalem spectal usque a locum quendam appelladum Cinquack prope equisdum fluminis astium scetuatum ubi in prefatum senum de Chesapeake evoluter ae inde per liniam — usque ad predictum promontowum sive locum vocatum Watkins point.

POOR C

(Translation of page 16.)

All that part of the peninsula or chersonese lying in the parts of America, between the ocean on the East and the bay of Chesapeake on the West, divided from the residue of the same by a right line drawn from the promontory or headland called Watkins point, situate near the bay aforesaid, near the river of Wigheo, on the West, unto the Great ocean on the East; and between that boundary on the South, unto that part of the estuary of Delaware on the North, which lieth under the 40th degree of latitude North of the equinoctial, where New England is terminated; and all the tract of that land within the metes underwritten (to-wit,) passing from said estuary, called Delaware, in a right line, by the degree aforesaid unto the true meridian of the first fountain of the Patowmack; thence verging towards the South to the further bank of the said river, and following it by the Western edge where that looks to (or inclines to) the South, unto a certain place, called Cinquack, situated near the mouth of the same river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line into the
573 aforesaid promontory or place called Watkins point.

Cecelius Calvert, Baron of Baltimore, in Ireland, June 20th, 8th year of Charles I., 16—.

Faulkner to Wise.—Relating to His Report on Boundary, in 1831—'32.

MARTINSBURG, *May* 1*st*, 1871.

Hon. Henry A. Wise.

DEAR SIR: I have just returned home after an absence of two weeks, and received your favor of the 20th inst.

On the 20th March, 1832, a resolution was adopted by the general assembly of Virginia, requesting the governor to obtain certain documents and testimony relating to boundaries of the States of Maryland and Virginia.

See Session Acts, 1831-32, page 308. In pursuance of power conferred by this resolution, I was appointed by the elder Gov. Floyd to procure the documents and testimony there referred to.

I completed my report early in November of that year, and transmitted it to Gov. Floyd, who laid it before the general assembly in his message of December, 1832.

You will find my report embraced in document No. 1, accompanying that message. You will also find immediately preceding my report the views of Maryland upon the same subject.

My report was accompanyed by many interesting historical documents which are particularly referred to in it. I deposited all these documents with the secretary of the commonwealth and librarian, and I know they were preserved for some years afterwards; but I learn by some publications, which I have seen in the Richmond papers, that they are no longer to be found in the public library of the State. I have no recollection of ever having had the benefit of

COPY

any suggestions of Gov. Tazewell in the preparation of that report.

574 I remember some years after that report was prepared, and when Mr. Tazewell was governor of the State, he invited me to dine with him, and after dinner he read to me an elaborate and very interesting essay which he had prepared, claiming the Monocacy river as the true dividing line between Maryland and Virginia.

His views were forcible and ingenious, but they left no further impression on my mind than an admiration of the rich resources of his mind.

I am,

Very truly and sincerely yr. friend,

CHS. J. FAULKNER.

(Here follow maps marked Exhibits B, C, D, F, G, & H.)

DARK PAGE BLEED THRU

[Endorsed on back of maps.]

4

Survey of Northern Neck, 1736-'7.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT B.

Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.
Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.

5

John Smith's Map.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT C.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

6

Augustin Herman's Map.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT D.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

7

Map of Fry & Pierre Jefferson.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT F.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

8

Map Accompanying Thos. Jefferson's Notes on Virginia.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT G.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.

Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

9

Deakins' Map.

Maryland *vs.* West Virginia.

DEF'T'S EXHIBIT H.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.

[Attached to map was the following:]

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing is a full and true copy of the Map made and returned into this Office by Francis Deakins, in compliance with a Resolution of the General Assembly of the State of Maryland of the 20th day of May 1787 "and a Commission from the Governor and Council to him directed the 11th of June 1787" for the purpose of surveying and laying out the Reserve Lands to the Westward of Fort Cumberland into convenient Lots of 50 acres each—on file in this Office.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this fifth day of December eighteen hundred and ninety two.

[Seal the Land Office of Maryland.]

PHILIP D. LAIRD,
Commissioner of the Land Office of Maryland.

STATE OF MARYLAND,
Anne Arundel County, sct:

I, Charles B. Roberts, Chief Judge of the Fifth Judicial Circuit of the State of Maryland, do hereby certify that the aforegoing attestation by Philip D. Laird, Commissioner of the Land Office of the State of Maryland, is in due form.

Given under my hand this Sixth day of December, eighteen hundred and ninety two.

CHARLES B. ROBERTS,
Chief Judge, Fifth Judicial Circuit of the State of Maryland.

STATE OF MARYLAND,
Anne Arundel County, sct:

I, Sprigg Harwood, Clerk of the Circuit Court for Anne Arundel County, do hereby certify, that Charles B. Roberts, Esq., who signed the aforegoing Certificate of Attestation was, at the time of so doing, ever since hath been, and still is, Chief Judge of the Fifth Judicial District of the State of Maryland, duly commissioned and qualified; and that to all his acts as such due faith and credit is and ought to be given, as well in Courts of Justice as thereout.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Circuit Court for Anne Arundel County this Seventh day of December, eighteen hundred and ninety two.

[Seal Circuit Court for Anne Arundel County, Md.]

SPRIGG HARWOOD,
Clerk of the Circuit Court for Anne Arundel County.

[Maryland Coat of Arms.]

THE STATE OF MARYLAND, EXECUTIVE DEPARTMENT.

I, Frank Brown, Governor of Maryland and custodian of the Great Seal thereof, do hereby certify that Philip D. Laird, Esquire, was duly appointed and commissioned and has properly qualified as Commissioner of the Land Office and Keeper of the Chancery records of the State of Maryland; that the said office was established by the Constitution of the State and that his term of office will not expire until May 1896. I further certify that his annexed certificate is in due form and that full faith and credit are due and ought to be given his official acts.

And I further certify that I verily believe that each of the signatures and seals attesting the said — are genuine.

Witness my hand and the Great Seal of Maryland.

Done at the city of Annapolis on the seventh day of December, in the year of our Lord eighteen hundred and ninety.

[Great Seal of Maryland, 1632.]

FRANK BROWN.

By the Governor:

E. W. LE COMPTE,
Secretary of State.

575 DEFENDANT'S EXHIBIT I.

MARYLAND
vs.
WEST VIRGINIA.

Copy.

Courses and Distances of All the Military Lots Lying Contiguous to the Line from the Fairfax Stone to the Pennsylvania Line.

From the Land Office of Maryland.

Cost of Copy, $4.00.

Endorsed: Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

Office Supreme Court U. S. Filed Mch. 6, 1893. James H. McKenney, Clerk.

576 DECEMBER THE 10TH, 1787.

In compliance with a Resolution of the General Assembly of the State of Maryland of the 20th day of May, 1787, and a Commission from the Governor and Council to me Directed bearing Date the 11th of June, 1787, for the purpose of surveying and laying out the Reserve Lands to the Westward of Fort Cumberland into Convenient Lots of 50 acres Each, &c.

I hereby certify that I have Carefully Surveyed for the State aforesaid 4165 lots of 50 acres each lying and being in Washington County and State aforesaid and on the Manors Reserves and Confiscated lands to the Westward of Fort Cumberland, as will appear by a General Platt thereof and Certificates numbered in rotation from 1 to 4165 in this Book and another Titled Ledger B.

FRANCIS DEAKINS.

Courses and Distances of Lots Contiguous to the Line from Fairfax Stone to the Pennsylvania Line.

316 Beginning at the end of one hundred and twenty-two perches on the third and last line of a tract of land called the Royall Charlotte and Running with said third line South twenty six degrees West two hundred and two perches then North one hundred and eighty perches then by a Straight line to the beginning Containing fifty acres.

317 Beginning at the Beginning of Lot 316 and running with the third line of the Royall Charlotte reversed North twenty six degrees East eighty perches West one hundred and twenty two perches South seventy perches then by a Straight line to the Beginning Containing fifty acres.

COPY BOUND CLOSE IN CENTER

318 Beginning at the end of the first line of lot 317 and Running North twenty six degrees East forty-two perches to the end
577 of the second line of the Royall Charlotte then with the second line reversed South sixty-four degrees East twenty perches to the end of the fourth line of Small Meadows and with it reversed North seven Degrees East twenty seven perches then North eighty degrees West 65 perches South seven degrees West thirteen perches West ninety six perches South fifty perches Then by a Straight line to the Beginning Containing fifty acres.

342 Beginning at *at* the end of the second line of lot 341 and Running north seven degrees East three hundred and fifty six perches North eighty three degrees West forty five perches South three hundred and sixty perches then by a Straight line to the Beginning Containing fifty acres.

343 Beginning at the end of the first line of Lot 342 and running North seven degrees East One hundred and fifty-two perches North eighty three degrees West sixty two perches South one hundred and fifty two perches Then by a Straight Line to the Beginning Containing fifty acres.

345 Beginning at the end of the second line of lot 340 and Running North eighty three degrees West one hundred and Sixty five perches South seventy six perches North eighty degrees one hundred and sixty-five perches to lot 323 then by a straight Line to the Beginning Containing fifty acres.

346 Beginning at a Bounded White Oak standing North twenty degrees East Eighty two perches from the Bounded trees of a Tract of Land Called Rich Levill and running North sixty degrees West one hundred and thirty four perches South fifty five degrees West sixty six perches South sixty degrees East one hundred and thirty four perches then by a straight line to the Beginning Containing fifty acres.

101 Beginning at a Bounded Maple marked 1100 standing one mile North from a stone fixed by Lord Fairfax for the head of the North Branch of Potowmac River and Running North eighty nine and a half perches East eighty nine and a half perches South eighty nine and a half perches Then by a straight line to the beginning Containing fifty acres.

78

102 Beginning at a Bounded Sugar Tree marked 1102 standing North eighty nine and a half perches from the beginning of Lot 1101 and running North eighty nine and a half perches East eighty nine and a half perches South eighty nine and a half perches then by a straight line to the beginning, Containing fifty acres.

237 Beginning at the end of three hundred and twenty seven perches on the third line of a tract of Land called Thomas and Ann surveyed for Thomas Johnson, Esquire, and Running South twenty eight degrees West two hundred and four perches North one hundred and Eighty two

perches Then by a Straight Line to the beginning Containing fifty acres.

1238 Beginning at the end of the second line of Lot 1237 and running North eighty perches East one hundred perches South eighty perches Then by a straight line to the beginning Containing fifty acres.

1239 Beginning at the end of the first line of Lot 1238, and running North eighty perches East one hundred perches South eighty perches then by a straight line to the beginning Containing fifty acres.

1241 Beginning at the end of the first line of Lot 1239 and running North eighty perches East one hundred perches South eighty perches then by a straight line to the beginning, Containing fifty acres.

1243 Beginning at the end of the first line of Lot 1241 and running North eighty perches East one hundred perches South eighty perches Then by a straight line to the beginning Containing fifty acres.

1245 Beginning at the end of the first Line of Lot 1243 and running North eighty perches East one hundred perches South eighty perches Then by a straight line to the beginning Containing fifty acres.

1282 Beginning at a bounded Maple marked 5845 standing North seventy seven degrees West two hundred and forty three perches from the end of the second Line of Lot 1277 and running West one hundred perches South eighty perches East one hundred perches Then by a straight line to the beginning Containing fifty acres.

579 1284 Beginning at the beginning tree of Lot 1282 and running West one hundred perches North eighty perches East one hundred perches Then by a straight line to the beginning Containing fifty acres.

1286 Beginning at a bounded Cherry tree marked 5051 standing north eighty perches from the end of the third line of Lot 1284 and running South eighty perches to the end of the third line of Lot 1284 then West one hundred perches North eighty perches Then by a straight line to the beginning Containing fifty acres.

1288 Beginning at the beginning of Lot 1286 and running North eighty perches to a bounded Cherry tree marked 5053 then West one hundred perches South eighty perches to the end of the third line of Lot 1286 then by a straight line to the beginning Containing fifty acres.

1290 Beginning at a bounded Maple marked 5055 and running South eighty perches to a bounded cherry tree standing at the end of the first line of Lot 1288 then West one hundred perches North eighty perches Then by a straight line to the beginning Containing fifty acres.

1292 Beginning at the beginning tree of Lot 1290 and running North eighty perches West one hundred perches, South

eighty perches Then by a straight line to the Beginning Containing fifty acres.

1294 Beginning at a Bounded White Oak marked 5059 and running South eighty perches to a Bounded pine marked 5057 standing at the end of the first line of 1292 then West one hundred perches North eighty perches Then by a straight line to the beginning Containing fifty acres.

1296 Beginning at the beginning Tree of Lot 1294 and running North eighty perches West one hundred perches South eighty perches Then by a straight line to the beginning Containing fifty acres.

1298 Beginning at a Bounded Cherry tree marked 5063 and running South eighty perches to the end of the first line of Lot 1296 then West one hundred perches North eighty perches Then by a straight line to the Beginning Containing fifty acres.

580 1400 Beginning at a bounded Cherry tree marked 5062 standing at the end of the first line of Lot 1299 and running North eighty perches West one hundred perches South eighty perches Then by a straight line to the beginning Containing fifty acres.

1402 Beginning at a bounded Maple marked 5065 standing at the end of the first line of Lot 1400 and running North eighty perches West one hundred perches South eighty perches then by a straight line to the beginning Containing fifty acres.

1460 Beginning at the end of the second line of Lot 1459 and running South one hundred and thirty two perches West forty six perches North one hundred and seventy four perches East forty six perches then by a straight line to the beginning Containing fifty acres.

1461 Beginning at the end of the first line of Lot 1460 and running South one hundred and seventy four perches West forty six perches North one hundred and seventy four perches Then by a straight line to the beginning Containing fifty acres.

1462 Beginning at the end of the first line of Lot 1461 and running South one hundred and seventy four perches West forty six perches North one hundred and seventy four perches Then by a straight line to the beginning Containing fifty acres.

1463 Beginning at the bounded tree of Lot 1448 and running West one hundred and forty six perches South twenty perches East ten perches South sixty one degrees East one hundred and fifty four perches Then by a straight line to the beginning Containing fifty acres.

2927 Beginning at the end of the second line of Lot 2926 and running South fourteen perches West seventy six perches North eighty two perches East one hundred and five perches South sixty eight perches Then by a straight line to the beginning Containing fifty acres.

2952 Beginning at the end of thirty four perches on the first line of Cherry Hill Granted to Wm. Deakins, jun'r and running South one hundred and seventeen perches East eighty perches North seventy eight perches to the second line of Cherry Hill then North thirty degrees West thirty four
581 perches then by a straight line to the beginning Containing fifty acres.

2954 Beginning at the end of fifty perches on the fifth line of Cherry Hill and running North ninety six perches West twenty seven perches South eight perches West ninety perches South forty one perches then by a straight line to the Beginning Containing fifty acres.

2957 Beginning at the end of the second line of Lot 2954 and running South eight perches West ninety perches North eighty eight perches East ninety perches then by a straight line to the Beginning Containing fifty acres.

2958 Beginning at the end of the second line of Lot 2956 and running North sixty four perches South eighty degrees West one hundred and ninety four ps. South thirty five perches then by a straight line to the beginning Containing fifty acres.

2980 Beginning at a Bounded White Oak marked 5142 standing at the end of the second line of lot 2979 and running South eighty three perches West ninety seven perches North eighty three perches Then by a straight line to the beginning Containing fifty acres.

2981 Beginning at the end of the first line of lot 2980 and running South eighty three perches West ninety seven perches North eighty three perches then by a straight line to the beginning Containing fifty acres.

2983 Beginning at the beginning of Lot 2980 and running North eighty three perches West ninety seven perches South eighty three perches then by a straight line to the beginning Containing fifty acres.

2985 Beginning at a Bounded Chestnut marked 5144 standing at the end of the first line of Lot 2984 and running North eighty three perches West ninety seven perches South eighty three perches Then by a straight line to the beginning Containing fifty acres.

2987 Beginning at a Bounded White Oak marked 5146 standing at the end of the first line of lot 2986 and running North eighty three perches west ninety seven perches South eighty three perches then by a straight line to the beginning Containing fifty acres.

2989 Beginning at the end of the first line of Lot 2988 and running North eighty three perches West ninety seven perches South eighty three perches Then by a straight line to the beginning Containing fifty acres.

582 2991 Beginning at the end of the first line of Lot 2926 and running South twenty six perches West seventy six

perches North one hundred and six perches East seventy six perches then by a straight line to the Beginning Containing fifty acres.

2992 Beginning at the end of the first line of Lot 2991 and running South one hundred and six perches West seventy six perches North one hundred and six perches then by a straight line to the beginning Containing fifty acres.

2993 Beginning at the end of the first line of Lot 2992 and running South one hundred and six perches West seventy six perches, North one hundred and six perches, Then by a straight line to the beginning Containing fifty acres.

2994 Beginning at the end of the first line of Lot 2993 and running South one hundred and six perches West seventy six perches North one hundred and six perches Then by a straight line to the beginning Containing fifty acres.

2995 Beginning at the end of the first line of Lot 2994 and running South one hundred and six perches West seventy six perches North one hundred and six perches then by a straight line to the beginning Containing fifty acres.

2996 Beginning at the end of the first line of Lot 2995 and running South one hundred and six perches West seventy six perches North one hundred and six perches Then by a straight line to the beginning Containing fifty acres.

2997 Beginning at the end of the first line of Lot 2996 and running South one hundred and six perches, West seventy six perches, North one hundred and six perches Then by a straight line to the beginning Containing fifty acres.

583 2998 Beginning at the end of the first line of Lot 2997 and running South one hundred and six perches West seventy six perches North one hundred and six perches then by a straight line to the beginning Containing fifty acres.

2999 Beginning at the end of the first line of Lot 2998 and running South ninety two perches South West thirty four perches West fifty three perches North one hundred and ten perches Then by a straight line to the beginning Containing fifty acres.

584 LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the aforegoing is a true extract from the contents of two books in Manuscript, labeled "Military Lots, Ledger A—1 to 2500 and Ledger B—2500 to 4165," containing the courses and distances of said Lots, as made and returned by Francis Deakins, now on file in this office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of the Land Office of Maryland, this Sixth day of December eighteen hundred and ninety-two.

_____.

Commissioner of the Land Office of Maryland.

STATE OF MARYLAND,
Anne Arundel County, set:

I, Charles B. Roberts, Chief Judge of the Fifth Judicial Circuit of the State of Maryland, do hereby certify that the aforegoing attestation by Philip D. Laird, Commissioner of the Land Office of the State of Maryland, is in due form.

Given under my hand this Sixth day of December eighteen hundred and ninety-two.

CHARLES B. ROBERTS,
Chief Judge of the Fifth Judicial Circuit of the State of Maryland.

STATE OF MARYLAND,
Anne Arundel County, set:

I, Sprigg Harwood, Clerk of the Circuit Court for Anne Arundel County, do hereby certify that Charles B. Roberts, esq., who signed the aforegoing Certificate of Attestation, was, at the time of so doing, ever since hath been, and still is, Chief Judge of the Fifth
585 Judicial District of the State of Maryland, duly commissioned and qualified; and that to all his acts as such due faith and credit is and ought to be given, as well in Courts of Justice as thereout.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of the Circuit Court for Anne Arundel County this Seventh day of December eighteen hundred and ninety-two.

SPRIGG HARWOOD,
Clerk of the Circuit Court for Anne Arundel County.

586 THE STATE OF MARYLAND,
EXECUTIVE DEPARTMENT.

I, Frank Brown, Governor of Maryland and custodian of the Great Seal thereof, do hereby certify that Philip D. Laird, Esquire, was duly appointed and commissioned and has properly qualified as Commissioner of the Land Office and Keeper of the Chancery records of the State of Maryland; that the said office was established by the Constitution of the State and that his term of office will not expire until May, 1896. I further certify that his annexed certificate is in due form and that full faith and credit are due and ought to be given to his Official Act.

And I further certify that I verily believe that each of the signatures and seals attesting the said — are genuine.

Witness my hand and the Great Seal of Maryland.
[SEAL.] Done at the City of Annapolis on the seventh day of December in the year of our Lord eighteen hundred and ninety.

FRANK BROWN.

By the Governor:

E. W. LE COMPTE,
Secretary of State.

587 (EXHIBIT J.)

(Doc. No. 21.)

Communication from the Governor of the State of Virginia, Relative to the Boundary Line between Maryland and Virginia.

January 9, 1860.

Charleston:
Moses W. Donnally, Public Printer.
1887.

Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.
Office Supreme Court U. S. Filed Mch. 6, 1893. James H. McKenney, Clerk.

588 (Doc. No. 21.)

Communication from the Governor of the State of Virginia, Relative to the Boundary Line between Maryland and Virginia.

January 9, 1860.

Charleston:
Moses W. Donnally, Public Printer.
1887.

589 RICHMOND, *January* 9, 1860.

Gentlemen of the Senate and House of Delegates:

I transmit herewith a message prepared by my predecessor, before the expiration of his term of office, upon a subject of the greatest interest and importance to the people of Virginia, accompanied by the report of Commissioner McDonald and by Lieutenant Michler's report, and other documents. Concurring in the views presented by Governor Wise, I commend them to your favorable consideration.

Respectfully, JOHN LETCHER.

Letter from Governor Wise.

To the Senate and House of Delegates of the General Assembly of the Commonwealth of Virginia.

GENTLEMEN: The Commissioner on the part of this Commonwealth, Angus McDonald, Esq., has just reported to me the actings and doings of the Joint Commission on the part of the States of Maryland and Virginia, touching the settlement of their boundaries.

This report shows the progress of the work, and that it is yet incomplete; but enough is shown to present the issues in controversy,

to which I beg leave to call your particular attention. The Act of March 26th, 1858, recites simply that the General Assembly of Maryland had passed two Acts for running and marking the boundary line between that State and the State of Virginia, beginning at certain points and running to others on the western and south eastern borders of the two States; and it authorized the Governor to appoint a Commissioner, who should with the Commissioner who might be appointed on the part of Maryland, cause the lines to be accurately surveyed, traced and marked. And the Commissioner
590 on the part of this Commonwealth is required to make a joint report with the Commissioner of Maryland, setting forth all the facts, and to forward a copy of their report to the Legislature of Virginia. This is to be sent to you for your ratification. It is important that you should understand the differences of opinion which may arise respecting these boundaries.

The first difference which presents itself, arises under this law. By it did Virginia enact that the "beginning" for the boundaries should be "at Smith's point, at the mouth of the Potomac river, and running thence to the Atlantic ocean, to form the eastern line; and beginning at the Fairfax stone, on the Potomac, at or near its source, and running thence due north, to the line of the State of Pennsylvania, for forming the western boundary line?" Were these meant to be the lines definitely fixed by this law; and was the duty of the Commissioners one merely of surveying, tracing and marking with suitable monuments?

My construction of the law was, that the duty of the Commissioners was to ascertain the true lines, and to describe them properly at those points which were designated as the parts of the boundary in dispute. My reasons for this construction are obvious.

1st. The act was one of courtesy to Maryland, and took the points designated by her, not by Virginia, as the places where the boundary lines were in dispute, as stated by her; and this act in deference to her complaints, intended no more than to correct any errors of boundary which might be found to exist, and not to fix any boundaries as already correct.

2nd. It is actually impossible to fix the boundaries which are described in this act. A glance at the map will show that to begin at Smith's Point, at the mouth of the Potomac, and to run thence to the ocean, could not possibly form the eastern line of the State of Maryland, or Virginia, without taking from one State or the other all of its eastern shore territory. And it don't say whether the line is to run north, or south, or east to the ocean. To run east, it would form a southern, but not possibly an eastern boundary; to
591 run north of east it would take from Maryland, and to run south of east it would take from Virginia much of undisputed territory now and ever in the past conceded.

3rd. It would be to demolish every ancient monument of boundary established for centuries on the eastern shore.

4th. In respect to the "western boundary," as it is called (whether of Maryland or Virginia, the Act don't say), the Act directs that the

beginning shall be at Fairfax Stone, "on the Potomac river," when there is not, and never was a Fairfax Stone "on the Potomac River."

5th. This construction, to treat the act as fixing lines to be surveyed, traced and marked only, would be to deprive the General Assembly of its power of election to ratify or reject the acts of the Commissioners, whilst the act itself expressly reserves the power of ratification or rejection to the Legislatures of the respective States.

For these reasons I gave to the Commissioner of Virginia the instructions which he will herewith report, not to yield one foot of her territory which had not theretofore been ceded according to the well known charters, conventions and grants under the Crown of Great Britain or under the State sovereignties since the Revolution, but to make every just concession under the respective muniment of title.

Under these instructions he has with great industry, research, faithfulness and ability acted, and he has caused a very accurate survey of the eastern shore line to be made by a most competent topographical engineer, Lt. Michler, of the United States army, ordered by the War Department to perform this work for the two States. And he has caused a successful search to be made for the "Fairfax Stone," whence to run the meridional line to the boundary of Pennsylvania, whereby to determine the true western boundary of the State of Maryland.

About the eastern shore boundary, after the full and minute report of Lieut. Michler, there can be no longer any dispute or difference.

592 The tongue of land forming Smith's Point is well ascertained and agreed upon as the starting point on the western shore of the Chesapeake, at the mouth of the Potomac, where that river disembogues into that bay.

Thence, by the charter of Charles I., on June 20th *June*, in the eighth year of his reign, 1632, the boundary was to run by the shortest line to the promontory on the eastern shore called Watkins' Point. That point has been clearly ascertained by Lt. Michler, and the line has been run thence to the main ocean on the east, according to the charter of Maryland herself, granted to Coecelius Calvert, Baron of Baltimore. And this line has been ascertained by finding the ancient monuments fixed east of the Pocomoke river by Philip Calvert and Edmund Scarborough, the Commissioners of Maryland and Virginia in 1668. The line was marked by them only on the east side of the Pocomoke to the ocean; but was marked on this part of the line with remarkable precision, and by the monuments still existing and easily found, all verified by Lt. Michler, and enabling the survey to identify the line to Watkins' Point. And by the charter of Charles to Lord Baltimore "the whole tract of land divided by the line between the main ocean and Watkins' Point unto the promontory called Cape Charles, was entirely excepted" from the grant to Lord Baltimore. By the verification of this true and correct boundary, this Commonwealth is shown to be entitled to two considerable points or promontories of territory between Chesapeake bay and the mouth of Pocomoke river, at the head of Pocomoke sound or bay. I trust that the views of the Commissioner of Virginia and the report

of Lt. Michler on this part of the boundary will be ratified and confirmed by the General Assembly of each State. The western boundary of Maryland depends upon the true reading of the 3d section of the same charter of Charles to Lord Baltimore.

The original is in Latin, and everything depends upon the correct translation of this charter to determine where the true boundary is.

I deny that the translation contended for by Maryland, as
593 shown by the part of her published archives which accompany the report of Commissioner McDonald, is correct. The Commissioner of this Commonwealth contends, that by that charter, the *northern* boundary of Maryland ran by the 40th degree of north latitude, "passing from Delaware bay in a right line by that degree unto the true meridian of the first fountain of the *river Potomac, thence diverging from that meridian* to the *ulterior* bank of *said river* and *following* it, &c." The words of the original are "usque ad veram meridianum primi fontis fluminis de Pottowmac, *deinde vergendo versus* meridiem ad ulteriorem dicti fluminis ripam &c." The Maryland translation of this is, "unto the true meridian of the first fountain of the river of Pottowmac, thence *verging towards the South* unto the further bank of the said river &c. &c. Now words could not be stronger than the words "vergendo versus meridiem," to deflect or diverge from the meridian, the line which is by the charter to start from a point on the parallel of 40 north, where it is intersected by meridi*a*nal line from the first fountain of the Potomac river, but which line is nowhere in the charter to be made to terminate at the first fountain of the Potomac. Even Maryland's translation don't make the line to run as the meridian does, due South, but it obliges it only to run "*verging towards* the south" when the original requires it to "*diverge from the meridian.*" And both the original and the translations require the line to strike the *Potomac* river, and no one of its fountains, or no one of its branches formed by any one of its fountains, is, or ever was the Potomac river so called, until they are many of them confluent far down its de-cent to the bay. Its general course is south-east, and yet the Maryland print makes it to run west and south from where the line is to strike the river, down to a place called Cinquack, where the river disembogues into the Chesapeake bay. In short, our commissioner contends that the obvious reading of the charter requires a meridi*a*nal line to be run only to obtain a starting point on the parallel of 40th degree of north latitude, and thence the line was intended to diverge south-eastward, and to follow the general average course of the river to a point at its mouth, on its ulterior or further bank. And which

bank was the ulterior or further bank is determined by the
594 fact that in contemplation of the law, the crown grantor was standing in Virginia and granting from him, and the northern bank of the Potomac was the ulterior or further bank from his standpoint as a grantor. But, however, this may be either in law, philology or geography, the commissioner of Virginia has very properly consented that a meridi*a*nal line shall be run from the Fairfax Stone, not to fix a western boundary for Maryland, but only to determine a point on a parallel of the 40th degree of north latitude,

whence a true line may be run to the Potomac river, according to the original charter of Charles I to Coecelius Calvert, Baron of Baltimore. Upon the whole, then, I approve and commend to you the report of our own commissioner, whatever the report of the commissioner of Maryland may be. His report I have not seen and will not see before my term of office expires. I recommend that the work may be allowed to proceed to a fuller and comp-ete development, and that no ratification or rejection be adopted until the whole survey is completed.

Most respectfully,

HENRY A. WISE.

December 31, 1859.

595 (Doc. No. 21.)

Report.

CITY OF WASHINGTON, *Dec.* 21, 1859.

To the Honorable the Legislature of the State of Virginia:

The undersigned, Commissioners upon the question of boundary between the States of Maryland and Virginia, in virtue of the authority of the Acts of the Assembly under which they respectively hold their commissioners, beg leave respectfully to report:

That they met at Washington City on the 18th August, 1858, and made the subjoined application (marked A), to the honorable Secretary of War, for the services of an officer of the United States engineers to aid them in the discharge of their duties.

That in accordance with this request the honorable Secretary of War kindly and promptly responded by detailing Lieut. N. Michler, U. S. Topographical Engineers.

That the Commissioners again met by appointment at New Creek, Virginia, and with Lieut. Michler proceeded thence to the locality of the Fairfax Stone.

The spot and stone were easily recognized and identified, September 19th, 1858, by the Commissioners and Lieut. Michler.

The following gentlemen did them the honor to accompany them. viz: James R. Partridge, Esq., Secretary of State of Maryland; Hugh Lennox Bond, Esq., of Baltimore; Philip Pendleton, Esq., of Alleghany county, Maryland, and John Coneway, the guide.

This duty performed, the Commissioners again met, September 30th, when in company with Lieut. Michler, they proceeded to the Eastern Shore of Maryland and Virginia.

Whilst at Horntown, Virginia, the accompanying instruc-
596 tions (marked B and C.), for commencing the duties entrusted to him, were agreed upon and given to Lieut. Michler.

The Commissioners met again at Baltimore, October 28th, and addressed the additional instructions (marked "D") to Lieut. Michler.

The accompanying report and maps of Lieut. Michler show the progress of the work up to this date; and we submit his estimates as the basis of appropriations for the erection of permanent and prom-

inent monuments to mark such boundary lines as said States may concur in establishing.

The Commissioners take this opportunity of acknowledging the zeal and intelligence of Lieut. Michler and of returning to him their thanks for the able manner in which he has discharged his duties, and recommend a suitable compensation be made for his services.

They are also under great obligations to the Superintendent of the U. S. Coast Survey for much valuable information contained in a number of tracings of manuscripts—maps of the topography in the vicinity of the eastern shore boundary.

ANGUS W. McDONALD,
Commissioner for Virginia.
THOMAS J. LEE,
Commissioner for Maryland.

597 (Doc. No. 21.)

"A."

WASHINGTON, *August* 19, 1858.

SIR: The undersigned, Commissioners for the States of Virginia and Maryland, to retrace and mark the boundary lines between the two States, have the honor to request, with the approbation of the Governors of their respective States, the assistance of the General Government, and that the Colonel of the Corps of Topographical Engineers of the United States Army be authorized by you to detail an officer of that corps, skilled in astronomy, and furnished with the necessary instruments, to be placed in charge of the parties to be employed upon the above duty.

It is our desire, should our request be granted, that the officer detailed should not be a native or citizen of either of the two States we represent.

We desire to proceed with the execution of the work as early as practicable.

We have the honor to be, sir,
Very respectfully,
(Signed) ANGUS W. McDONALD,
Commissioner for Virginia.
THOS. J. LEE,
Commissioner for Maryland.

Hon. John B. Floyd, Secretary of War.

598 (Doc. No. 21.)

"B."

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORNTOWN, ACCOMAC CO., VA., *October* 2, 1858.

SIR: The Commissioners desire that you proceed at once to obtain, by actual survey as accurately as possible, a plat of the old

Scarborough line, traced somewhere about the year 1668, from near the mouth of the Pocomoke to the sounds near the sea; and also a continuation of this line, westerly along and near the north shore of Pocomoke bay, to Tangier sound. It is supposed that there is still standing some old marks of the Scarborough line, but that, nevertheless, where these marks do not exist, a close approximation can be had from the limits of the lands of those persons owning adjacent to it.

You will please, therefore, ascertain as you progress and mark on your plat, as nearly as you can, the names of the proprietors on each side of the line, with the limits of their tracts adjoining it, noting the parts of the line that are now acknowledged and adopted as such, and those parts that may still be in doubt.

It is inferred, from documents in possession of the Commissioners, that the commission of 1668 did not mark the line west of the Pocomoke, and that in all probability you will find no marks to guide you. You must therefore be governed in the direction of your line westerly from the Pocomoke to Tangier sound, by the main or average direction of the whole line on the east side of the river (the line dividing Worcester from Accomac.) It is equally desirable to note, along this portion of your work, the names of the proprietors, and limits on said line of lands of each, with the location of all dwellings and improvements adjacent, and also the limits of marsh and firm ground, upon the southern side of your line especially. As the preliminary step of the Commissioners is merely to obtain the best local information, you will, to avoid misapprehension on the part
599 of those interested, please explain to them the object of your survey. The originals of your notes and plat you will for the present retain in your possession, subject to the future orders of the Commissioners, and transmit to each of them a certified copy of the plat, with such explanation as you deem essential.

To carry out these instructions, you will be allowed to employ one assistant, (a surveyor and draughtsman) at a compensation of four dollars per day for the time he may be employed, and such number of laborers as you may deem necessary, having strict regard to economy in your expenditures.

You will please submit an estimate of what amount of funds you will require for the present.

We are, sir, very respectfully,

A. W. McDONALD,
Commissioner for Virginia.
THOMAS J. LEE,
Commissioner for Maryland.

Lieutenant N. Michler, U. S. Topographical Engineers.

600 (Doc. No. 21.)

"C."

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORNTOWN, ACCOMAC CO., VA., *October* 4, 1858.

SIR: At the conclusion of the preliminary examination you are instructed to make by our letter of October 2d, you will please proceed to Fairfax Stone, at the head of the north branch of the Potomac, as ascertained, and identified by us on the 19th September last, and prosecute, as far as the season will permit, such astronomical observations as may be requisite to determine the direction of a meridional line from this point to the Pennsylvania line.

As it is not probable that the whole of this line could be traced this Fall, you will, for the present, confine yourself to the astronomical part merely, and to establishing as many distant points along the line as you may deem essential, as checks to the surveys in tracing and marking the same.

For which purpose, you are authorized to retain the services of your Assistant, at the same compensation, and to employ such laborers as you may require.

You will please, also, inform us of the probable amount of funds you may require for this service.

We are, sir, very respectfully,

A. W. McDONALD,
Commissioner for Virginia.
THOS. J. LEE,
Commissioner for Maryland.

Lieut. N. Michler, U. S. Topographical Engineers.

601 (Doc. No. 21.)

"D."

BALTIMORE, *October* 28, 1858.

SIR: In addition to the instructions contained in our joint letter of October 2d, you will please extend your survey to that portion of islands in Chesapeake bay, through which the Maryland and Virginia boundary is supposed to pass, between Watkins' Point and Smith's Point, so as to give the Commissioners, as nearly as you can, the names of the land holders upon each side, with the extent of the lands of each along the line.

And as it appears that the United States coast survey topography does not at present include what is now called the mouth of the Potomac river, you will also include that in your surveys.

By joining these detached surveys with the nearest coast survey trigonometrical point, we will be enabled, with the aid of that tri-

angulation, to locate them accurately upon a general map if necessary.

ANGUS W. McDONALD,
Commissioner on the Part of Virginia.
THOMAS J. LEE,
Commissioner for Maryland.

Mr. Michler will please send each of us accurate copies of the above by mail.

A. W. McDONALD.

Lt. N. Michler, U. S. Topographical Engineer.

602 (Doc. No. 21.)

Lieutenant Michler's Report.

Maryland and Virginia Boundary Survey Office.

WASHINGTON, D. C., *December* 20, 1859.

GENTLEMEN: Agreeably to orders from the War Department, dated Adjutant-General's Office, Washington, August 20, 1858, I had the honor of being assigned, in accordance with your request, to the special service of assisting you in tracing and marking the boundary lines between your respective States, Maryland and Virginia. Copies of said orders were enclosed to each of you, by letters addressed you on the 27th of August, 1858.

I now have the pleasure, in pursuance of the several instructions since received from you, and in compliance with your wishes, as expressed in the different conferences held upon the subject, of submitting to you a report of the progress made of the survey under my charge, comprising the labor on the ground, and the subsequent mapping of certain portions of the field notes; and also to call your attention to such matters as remain to be attended to in order to render the work complete.

In the accompanying Appendix will be found copies of each and all the several official communications which have passed between us, including both instructions, reports and estimates; also a copy of the original grant made to the Baron of Baltimore, defining the confines of the lands constituting the old colony of Maryland; the agreement of the Commissioners of 1668; and also a copy of an extract from the records of the Virginia Land office, defining the position of the locality designated Smith's Point, at the mouth of the Potomac River—all arranged in the order of their respective dates.

On the 19th of September, 1858, by invitation of the Com-
603 missioners, I visited, in company with several other gentlemen, the head springs of the north branch of the Potomac, to ascertain the position of, and identify the "Fairfax Stone," planted near said springs by the Commissioners appointed to fix the limits of the immense tract granted Lord Fairfax, between the Rappahannock and the Potomac. Upon finding it, I was directed to assume it as

the initial point of the western meridional line, which subsequently the Commissioners requested me to trace.

Again, during the latter part of the same month, and the first days of October, I accompanied the Commissioners to the eastern shore of Maryland and Virginia, to ascertain the existence and nature of any marks along the boundary line between Smith's Point, at the mouth of the Potomac, and the Atlantic ocean, stretching across the Chesapeake bay and the peninsula of the eastern shore.

The result of these examinations was the reception of the joint instructions of the Commissioners, dated severally on the 2nd, 4th and 28th of October, 1858, and which I successively proceeded to comply with at such periods of time as circumstances would permit.

My attention was first drawn to that section of the boundary line between the States, referred to in the charter from the English Crown to Coecelius, Baron of Baltimore, of which the following is an extract:

"All that part of the peninsula or chersonese, lying in the parts of America, between the ocean on the East, and the bay of Chesapeake on the West divided from the residue thereof by a right line, drawn from the promontory, or head land, called Watkins' Point, situated upon the bay aforesaid, near the river of Wighco on the West, unto the main ocean on the East."

The Watkins' Point here referred to, was designated by the commissioners, Philip Calvert, chancellor of the colony of Maryland, and Edmund Scarborough, surveyor general of the colony of Virginia, in certain articles of agreement, drawn up and signed
604 by them, June 25th, 1668, after discharging their duties, as "the point of land made by the north side of the Pocomoke bay and the south side of Annamessex bay." At the same time, the divisional line between the two colonies was described to be, an east line ran "with the extremest part of the westernmost angle of said Watkins' Point over Pocomoke river, and thence over Swansecute's creek, unto the marsh of the seaside, with apparent marks and boundaries." Your instructions of the 2nd of October, 1858, desired me to "proceed at once to obtain, by actual survey, as accurately as possible, a plot of the old Scarborough line, traced somewhere about the year 1668, from near the mouth of the Pocomoke to the sounds near the sea, and also a continuation of this line westwardly along and near the north shore of Pocomoke bay, to Sangier Sound."

In accordance with these instructions, I proceeded to Horntown, Accomac county, Virginia, south of and within a few miles of the line now recognized as the boundary by those residing along and near it, and on the 29th of November commenced the duties assigned me. My party consisted of one assistant surveyor, Mr. John de la Camp, and five men, employed as chainmen, rodmen and instrument bearers. At first considerable delay was experienced in consequence of the frequent rains, which prevented the party from taking the field, but subsequently the weather proved very favorable and propitious for the survey. The instruments used during the execution of this portion of the work comprised a very excellent Brunner theodolite for obtaining all horizontals angles, and a steel chain of fifty

feet in length for measuring distances. To test the accuracy of these measurements angles were frequently taken from the several successive stations to some one prominent object, visible from each; or, where this could not be done, the same common points would be connected by different surveys along the several roads between them, each being a verification of the other. It was impossible to triangulate across the peninsula, owing to the extremely level nature of the country, and being heavily timbered with pine; the expense of cutting the numerous lines of sight and building stands for the instruments, to say nothing of the great loss of time, was not warranted by the nature of the work. It is well known to the honorable Commissioner from Maryland, that on a previous examination made by himself, when on duty connected with the United States coast
605 survey, that a not very favorable report was made by him as to the practicability of connecting the triangulations on the Atlantic coast with that down the Chesapeake bay, across or in the neighborhood of this very belt of country. The survey was also checked by connecting it both on the Atlantic coast, and on the shores of Pocomoke bay, Tangier sound and Chesapeake bay, with many stations of the United States coast survey triangulation. This connection is particularly advantageous in enabling the results of the recent survey to be laid down accurately upon any general maps of the two States, should it be desirable to do so at any future time. With a small Schmalcalder compass, numerous reconnoisances of roads and lanes and trails were made adjacent to the main work.

For the sake of general information, these are laid down in connection with the more accurate survey along the line. In order to unite the present line with some permanent fixed place, as a point of reference, the survey was commenced in the principal street of the town of Horntown. It is also connected with other well known localities,—as New Church, Wagram, Pitts wharf and Shelltown. An accurate plot of Horntown, as it appeared on the 29th of November, 1858, is one of the results of our labors. From this initial point the line of survey was carried along the State road leading to Snowhill, as far as its intersection with what the citizens of the two States, residing in the neighborhood, now recognize as the boundary line; thence it continued towards the east, along or near this line, to the shore line of the march near Chincoteague bay. Afterwards it was resumed at the point of intersection with the State road, and a line run westwardly and continuously along and near the designated boundary to the Pocomoke river. Having ascertained from these surveys the general direction of the marked line beyond Chincoteague bay and the Pocomoke river, this course was preserved in the survey made beyond this last river, as far as the shore line of Jane's island bounding on Tangier sound, only deviating from it when compelled by the nature of the country.

606 In explanation of the manner in which the work was executed, I must say that no one direction or course was assumed and run, but that the survey was made along the roads and lanes most convenient to and on either side of the reputed boundary, and no great distance from it. Sometimes, however, when neces-

sary, and expedient, it ran across fields and through woods. This was done to expedite matters as much as possible, as it frequently did away with the necessity, and the consequent labor and loss of time, of cutting long lines of sight through pine woods, when existing roads not only wind around or through them, but necessarily lead near the more settled portions of the country. From the main line offsets were made to, or as more frequently happened, the survey passed immediately by such points of local interest as were acknowledged by parties in both States as old boundary marks. Some of these marks consisted of old blazed trees—such as oak, hickory, gum, cherry, persimmon, mulberry and sycamore. Near every point of intersection of the boundary line with the roads leading from Virginia into Maryland, the neighbors point out some immense oak, with its huge, wide spread branches, venerable with age, which has become celebrated the country round as "the marriage tree". Under the shade of these trees, the most noted of all boundary marks, and just across the line, youthful couples go to be united in holy wedlock —fleeing from the wrath of parents, or from the stringency of marital laws, or perhaps from mere pleasure or excitement, they run away from home to commit an act, of which many live to repent when too late.

Other marks of the line are to be found either in country roads or lanes, or in divisional fences, between neighboring farms, or in gates or sometimes in houses, known and admitted to be such by all persons, irrespective of State—the localities being handed down from one generation to another, and their history being recorded in the memories of the oldest inhabitants.

Nor was there any trouble in ascertaining their position. Either interest as to the correctness of the line, or curiosity to exam-
607 ine the instruments, or to see what was being done; or, as frequently happened, the mere want of something else to do, or sometimes prompting of mere kindliness of heart, disposed many persons to offer every assistance in their power, and induced them to accompany the party for miles on their way, to impart such information as was desirable, and the obtainance of which might otherwise have occupied a great deal of time not easily spared.

Along the whole length of the line between Chincoteague bay and the Pocomoke river, a distance of between eighteen and nineteen miles, there were existing of such marks, at the time of the survey, thirty trees; one gate; the site of the ruins of an old house, standing at the time the Scarborough line was run; two State roads, located on the line, measuring nearly 10,800 feet, making in all, an average of one mark for every half mile. At the end of each day, a rough field plot was made of the work done, and on reaching the Pocomoke these marks when laid down on the maps were found to be nearly on the same straight line: The general direction of this furnished the course, as has been previously stated, of the survey of that river.

The instrumental stations of the boundary survey, near the Atlantic terminus, were connected with one of the secondary trig-nometrical points of the United States coast survey at Snead's house, and also with several minor localities, such as signals, houses, barns,

fences, roads and shore lines, as laid down by their plane table parties, thus making a great many points in common between the two works. In the prolongation of the line westwardly along and near the north shore of Pocomoke bay to Tangier Sound, several of the coast survey signals, those of the secondary triangulation connected with the primary one on the Chesapeake bay, came successively in range of our instruments at different points. They are called Marumsco, Watkins' Point, Jane's Island, and Horse Hammock, on Smith's Island. As on the Atlantic coast, a great many other points were made common to both surveys.

Along the line of the entire survey, as desired in your instructions, "the names of the proprietors" "on each side of the line" were accurately ascertained, "with the limits of their tracts adjoining it."

At the same time, "the parts of the line that are now acknowl-
608 edged and adopted as such, and those parts that may be still in doubt" were noted. In addition to the above, the location of all dwellings and improvements adjacent, together with their exact horizontal dimensions and relative positions, are established and also the limits of marsh and firm ground, including the character of the latter, whether cultivated or wooded. A survey of the Pocomoke river, from the point where the line touches it, down to its mouth, was also made. Your additional instructions of October 28th, 1858, called upon me to extend my survey "to that portion of the islands in Chesapeake bay, through which the Maryland and Virginia boundary is supposed to pass, between Watkins' Point and Smith's Point, at the mouth of the Potomac."

Although two different efforts to reach Smith's islands proved unsuccessful, in consequence of the high winds on the Chesapeake and the extreme cold weather at the time, greatly interfering with all field work; still, from the few angles taken on Jane's island to different points on the former, with the asistance of the coast survey sheets, and such information as was gained from the neighboring inhabitants, I am able to furnish the information desired by you in your instructions. The field work of the Eastern shore section having been completed, my party returned to Washington on the first of December, 1858. The office duties in connection with the mapping of the field notes commenced at once, and were continued, without interruption, until the first of the following June, 1859. Preparations were then made to take the field again, in order to trace and mark the western meridian line through Fairfax Stone.

During this term of office work, seventeen sheets of maps were constructed on fifteen of these, on a scale of 1-5000, to represent topographical features of the country surveyed, drawn in very minute detail—setting forth all the facts and information gained during the field operations, as explained in the previous pages of this report. The figures in red ink denote the numbers of the stations occupied by the instrument in the survey. They are useful in exhibiting the relative position of the present line to the different landed estates along it, showing also their limits, their character and the names of

the proprietors. They will also serve as guides in the retrac-
609 ing and remarking of the line, should it be deemed advisable to do it, and now stand as lasting monuments to the exact locality of the line, as it is now known. Two of these drawings on a smaller scale of 1-32000, are general maps of the whole line, compiled from the detailed sheets, and also in part from the United States coast survey charts. These latter were kindly placed at my disposal by the officers in charge of the office directing those surveys. By inspection of these maps, the whole subject of the Eastern Shore section of the survey becomes elucidated. It will be seen, by an examination of the first sheet, that the full straight line drawn in red ink between the Chincoteague bay and the Pocomoke river, starting from this river and running "thence over Snansecute creek unto the marsh of the seaside" passes through, or very nearly so, all the boundary marks, as laid down from the plot of the field notes, and represented on the maps by asterisks. Two only of the marks are at any distance from this straight line, and there, not more than three hundred and fifty feet. This shows that the line originally traced and marked by Scarborough and Calvert, was very well executed, considering the inaccuracy of the instruments used in those days.

The azimuth, or direction of this line, was 5 degrees 15 minutes north of east at the time of the recent survey, in November, 1858. From a long series of magnetic observations, made by the United States Coast Survey, the annual change in the variation of the magnetic needle has been nicely determined.

Computing the amount of this change, which has taken place during the last one hundred and ninety years, and combining it with the actual variation, as obtained at Snead's house, a coast survey station, it will be found that, at the time Scarborough and Calvert first ran the line, in 1668, the variation of the needle must have been nearly, if not quite, 5 degrees 15 minutes north of east. This shows that the direction of the line then marked by the commissioners was due magnetic east, and that in all probability, it was run with a compass without allowing for any variation of the needle.

The second sheet of the general map exhibits the fact that
610 the line between Chincoteague bay and the Pocomoke river, run "with apparent marks and boundaries," when prolonged across the latter river and along and near the north shore of Pocomoke bay to Tangier sound, represented on the second drawing by a broken red line, reaches the sound at the westernmost point of Janes island, about 500 feet south of the coast survey signal planted on the same island. No boundary line marks of any kind were found west of the Pocomoke, and the inhabitants professed to be in ignorance of the existence of any. Assuming Watkins' Point to be a peninsula or neck of land, such as North Point, near Baltimore, or Smith's Point at the mouth of the Potomac, and not a mere mathematical point, I think the results of the recent surveys clearly prove its position, as defined by the Commissioners Scarborough and Calvert, namely, "the point of land made by the north side of Pocomoke bay and the south

side by Annamessex bay;" or that neck of land now known as "Little Annamessex."

The name of "Annamessex bay" does not now exist on any of the recent maps. However, there can be but little doubt that the mouth of the Big Annamessex river, so much resembling an inland bay, may once have given rise to the name. Although the angle of this point of land, where the line now strikes the sound, is even at this day the most western one, still many years ago the land made out into the sound a much greater distance. Jane's island is said by Capt. John Nelson, aged 72 years, to have extended, within his recollection, to the present position of the light ship, now anchored about a mile and a half out from the present shore line. Stumps of trees are said to exist in the marshes and in the water between the main land and Watts' island, showing that it probably was once one continuous neck of land as far south as that island. On the second sheet is also found a map of Smith's islands, the southern extremities of which have always been acknowledged to be within the jurisdiction of Virginia. With the exception of four or five acres of firm ground, mere sites for rude fishermen's huts, the other portions of these islands, south of what is considered the boundary line from Smith's point to Watkins' Point, across the Chesapeake bay,
611 consist of salt marshes. Drawing the line from Smith's Point, at the mouth of the Potomac, the locality described in the grant of land from Sir William Berkeley to Samuel Smith, dated the 18th of March, 1650, across Smith's island, at or near the point where said line is said to pass, it will be seen that it intersects the prolongation of the Scarborough line, very near the anchorage of the light ship, and where formerly existed the shore line.

This point of intersection must be very nearly the position of the initial point, "the westernmost angle of Watkins' Point," from which the old Scarborough line was originally run. The coincidence between the relative positions of these lines, and the facts concerning them, is very remarkable. A map of the line across Chesapeake is drawn on a scale of 1-128,000, and is found in the second sheet of the general map. It is also seen on the same map, that the land lying south of the prolonged, or broken line, is principally marsh—the area of the firm land, south of it and west of the Pocomoke, not exceeding eight square miles. This portion of the country, including the different necks of land known as Pocomoke, Marumsco and Little Annamessex, is now considered to be in the county of Somerset, and State of Maryland—the people paying taxes and placing themselves under the jurisdiction of that State. East of the Pocomoke, however, the marked line is really the divisional one between the two States of Maryland and Virginia, separating Worcester county in the one State from Accomac county, in the other. It is so recognized by those living in peaceful possession of property on both sides of it. This portion, in several instances, forms the limits of lands between proprietors claiming possession by original patents derived from one or the other of the respective States—these patents calling for the boundary line as the divisional line between adjoin-

ing tracts. As near as could be ascertained by enquiry, the following list of land holders possess such patents, viz:

612 From Maryland.	From Virginia.
Mrs. Elizabeth Mason	William Rowley.
Mr. Esa Boston	Mrs. Elizabeth Taylor
" Henry Pope	Capt. James Chapman
" " "	Mrs. Louisa Jane Dennis.
Major Guy Holland	" " " "
" " "	Mrs. Elizabeth Seymour
Mr. James Payne	Mr. William Aydelott
" Alfred Pilcher	" John Brittingham
(lane between)	

The lands of James Aydelott, Thomas Marshall, John Whelton, Solomon Marshall and Samuel T. Ball, call for one common trunk of a tree, a line mark, situated in the marsh between the farms of James Aydelott and Samuel T. Ball. This list may be erroneous and incomplete in some respects, as I had no access to the plots of the survey of the two counties.

The following is a list of land proprietors along the marked line between Chincoteague bay and the Pocomoke river, and its prolongation to Tangier sound. The heavy line indicates when the boundary line is the divisional line between adjacent farms. When a name crosses it, the proprietor owns land in both States:

Maryland Side.	Virginia Side.
Mrs. Elizabeth Mason	William Rowley.
Mr. Broughton	Mrs. Tabitha Tull.
Esa Boston (in Newtown)	Henry Clay Lindsey
Henry Pope	Mrs. Elizabeth Taylor
Major Guy Holland	Capt. James Chapman
Mrs. Elizabeth Taylor	Mrs. Louisa Jane Dennis.
	Mrs. Elizabeth Seymore.
613 Crossing Swansecute Creek	
Dr. Pitt.	Alfred Selby
Gideon Tull	John Silverthorn
James Payne	
William	Aydelott
James A	ydelott.
Samuel Ball	Thomas Marshall
John Mills	John Whelton
	Solomon Marshall
Mrs. Har	riet Tull.
Samuel Davis	Tull's Mill.
Thomas Hargis,	(Melville's farm,)
Alfred Pilcher	John Brittingham

Dennis' Mill pond at Wagrm | Thomas Slocumb
Irvin Merrill
Mrs. L. T. Dennis' saw and grist mill.

Mrs. Louisa Jane Dennis,
Benjamin Tull,
Mrs. Elizabeth Merrill

After crossing Pocomoke river, the following is a list of proprietors along and in the neighborhood of the line of survey:

John Melbourne,
Mrs. Sarah Ann Broughton

S. S. Roggs
James S. Revell

Isaac L. Marshall
James S. Revell
William Adams
Daniel Boston
Mrs. Susan Bell

Stephen Coulbourne

614

Capt. James Adams,

Robert Prices' heirs,

Richard Davis

(Crossing Marumsco Creek.)

Samuel Thomas Adams
James Sanberson
Henry Connor

James Revell

(Crossing east creek.)

James Bedsnorth
John Morris. } Doubtful whether
John Ward } owners or
Lorenzo Melbourne } tenants.

Benjamin Lankford.

Henry Whittington
Charles Bell
John Bell

James Horsey
Edgar Horsey
Mrs. Hennie Horsey

Isaac Horsey
Benjamin Macready

George S. Handy	Henry S. Handy
William Handy	
(Crossing Ap	e's Hole Creek.)
Lorenzo	Daw Lawson.
Mrs. Elizabeth Hickman	Richard Sterling
Samuel Danick	
Josiah Sterling	William Moore
Abraham Somers	William Henderson
Benjamin Somers	Mrs. Millie Davy
615 John Riggings	Shedrick Sterling.
Albert Horsey	Jason Riggings.
Mrs. Grace Sterling.	
Benjamin	Somers
David St	erling.
James Faus	John Somers
Somer's	Cove
Michael Somers George Evans Severn Evans Benjamin Thomas — Jane's Island.	Riggings and Somers, (Stone.)

By examining the detailed maps Nos. 13, 14 and 15, it will be seen that the neck called "Little Annamessex," is very thickly settled, presenting more the appearance of an extended village. The inhabitants are mostly of a sea-faring character. Besides the small amount of farming done by them, their chief occupation seems to be on the water, either fishing, oystering or carrying cargoes of potatoes, oysters and other commodities to the Baltimore market, or other parts on the bay.

Although only occupied in the field during the month of November, 1858, a good portion of which time was either very wet or extremely cold, still I am able to report that, in this time, the party surveyed over 41 miles of roads and measured 1,016 angles with the Brunner theodolite, at the same time locating all the lands and dwellings along the line of survey.

The following is a list of the direct distances along the line from the Atlantic coast to Smith's Point, at the mouth of the Potomac:

From the Atlantic coast to west shore of Chincoteague bay	7.23 miles
From west shore of Chincoteague bay to east bank of Pocomoke river	18.91 miles
From east bank of Pocomoke river to Jane's island coast	14.98 miles
From Jane's island coast to Smith's Point (mouth of Potomac	19.32 miles
Total distance	60.44 miles

616 Before closing the report relating to the survey on the Eastern Shore of Maryland, and in order that it may not be necessary to refer to the matter again, I now take the pleasure of stating that all the original maps, both detailed and general, have been constructed and drawn under my direction, by my assistant, Mr. John de la Camp, to whom I would respectfully call the attention of the honorable Commissioners, for the very able and beautiful style in which he has performed this duty, as well as the energetic manner in which he assisted me whilst prosecuting the field labors. While absent during last summer, engaged in tracing and marking the western meridian line, the office duties were continued, and the duplicates of the detailed sheet were drawn. In the coure of a few weeks, I hope to be able to inform you of the completion of both detailed and general maps in duplicate.

A set of these maps is intended for each State. As they are not yet entirely completed, I would respectfully submit them at present to the Commissioners for their inspection, requesting, however, that they may be returned to this office for final completion, at their very earliest convenience.

Your instructions, gentlemen, of October 4, 1858, contain the following extract:

"At the conclusion of the preliminary examinations, you are instructed to make, by our letter of October 2d, you will please proceed to the Fairfax stone, at the head of the north branch of the Potomac, as ascertained and identified by us on the 19th of September last, and prosecute, as far as the season will permit, such astronomical observations as may be requisite to determine the direction of a meridianal line from this point to the Pennsylvania line."

As the season was already advanced into winter before my party returned from the survey on the eastern shore, and the meridianal line being located on the top of the Alleghany mountains, the weather would not permit me to take the field again until the month of June this year. Previous to doing so I had the honor to submit to you an estimate for funds to enable me to prosecute the tracing and marking of the line. On the 5th of June, my party left
617 Washington for Oakland, Allegheny county, Maryland, the most available point to the scene of our labors. At this place, my arrangements, such as the purchase of supplies and camp equipage, were made preparatory to establishing my first camp. The instruments used on this work were again furnished me by the bureau of topographical engineers, and consisted of a large, portable astronomical transit, a zenith telescope, a sextant and artificial horizon, two theodolites, three surveyor's compasses, with chains and pins, two cistern barometers, one sidereal and two mean solar box chronometers, together with other necessary articles appertaining to such surveys. In consequence of the more varied and laborious nature of this duty, my party, this season, had increased in numbers. It consisted of one principal surveyor, Mr. John de la Camp; one carpenter, Mr. Louis Daser; one guide, five men as instrument bearers, rodmen and chainmen; one attendant on observatory; from five to ten axemen, according to circumstances; and one cook. The trans-

portation of instruments, provisions and camp equipage from Oakland to Arnold's farm, the nearest and most accessible spot to the initial point for wagons, and the subsequent packing them on the backs of the men, for nearly a mile up and down the steep faces of the mountains, was attended with considerable delay and difficulty. Neither on this, the first morning, nor on any subsequent occasion, when changing from camp to camp, was the trouble and anxiety light, in consequence either of the absence of, or impossible condition of the country or roads, or the constant dread of some accident happening to the delicate parts of the instruments. Any false step or neglect might have delayed the work for a long time, before they could be replaced by others.

The party reached the head springs of the north branch of the Potomac on the 17th of June. To avoid the porterage over the mountain of tents and their appurtenances, very convenient and commodious huts were built for shelter at night, and from rain. This camp was a most beautiful one, surrounded by immense forest trees of every variety peculiar to the Alleghanies, forming the densest and most delightful shade, supplied from springs of the most deliciously cool water, and furnished with every desirable comfort--sometimes even delicacies in the shape of game, the life was truly a very agreeable one. The occasional visits from friends
618 formed pleasant episodes, and made the time pass most delightfully. The view from it was but limited, as the mass of growth forbid any far penetration of sight. The initial point of the work, the oft mentioned, oft spoken-of "Fairfax Stone," stands on a spot encircled by several small streams flowing from the springs about it. It consists of a rough piece of sandstone, indifferent and friable, planted to the depth of a few feet in the ground, and rising a foot or more above the surface. Shapeless in form, it would scarce attract the attention of the passer by. The finding of it was without difficulty, and its recognition and identification, by the inscription "Ffx," now almost obliterated by the corroding action of water and air. In order not to disturb this stone, the first observatory was built immediately in the rear of it. The instrument used in ascertaining the direction of the line at the first principal station, the middle point of the "Fairfax Stone," was a large portable astronomical transit by Wurdemann, employed in connection with a sidereal chronometer. It was placed in position on the meridian by the method of high and low stars. An open cut was then made through the timber, varying from twenty to twenty-five feet, so as to give a clear line of sight to the next highest point to the north, on the top of the ridge on the back bone of the Alleghanies. When brought into the field of view of the instrument, a signal was placed on the ridge in the direction of the line, by means of gunpowder flashes at night, the distance being too great to direct the movements of a flag by day. Thus the position of the second principal station was established. Any intermediate points on low, intervening ridges, visible from the instrument, were then marked without disturbing its position. The low valleys of flats between said points were afterwards run and cut out by prolonging the direction with a small theodolite. To give sta-

bility to the transit whenever used, it was always set up upon stone piers, built of the best material at hand. The stones were rudely dressed, and sunk some three feet into the earth. Upon removing the instrument from the first principal station, a monument of stone was erected to mark the spot where it stood. It was then
619 carried to the second principal station—the same work gone through with as at "Fairfax Stone." By sighting back to the first monument, the transit was at once placed in position on the meridian; and observations on high and low stars verified the accuracy of the line. The same process was gone through with at every succeeding transit station. The point on the back bone of the mountains is well marked by nature, as it stands on a sharp ridge, and within a few feet of its highest point. The view from this point was most extensive and magnificent. The eye could look for miles in every direction. The valleys of the Cheat, the Black Water, the Potomac and the Youghiogheny rivers, all could be [illegible] early in the morning or late at evening by the white lines of delicate fog rising up from the water. To the south lay impenetrable forests, whilst to the north farms and glades were spread out before the admiring gaze. A visit to this station not far from the head springs of the Youghiogheny, is well worth the trouble of the traveler.

From this the third principal station was established on Lauer Hill, besides several others on the low ridges between. The position is not a very high one, and much more accessible than the rest. Between these two the line intersects the Horse Shoe run road and the northwest turnpike. The fourth principal station was on top of Snaggy mountain. Before reaching it, the line crosses the Baltimore and Ohio railroad. From the top of this mountain another very extended landscape is presented to the eye.

This is truly the most important of all the stations along the line, as from it you can overlook with the transit nearly the entire length of the meridianal line. It is also a well marked position by nature, in consequence of its great altitude and the small area of its summit. From the fact of the line passing immediately over the highest point it becomes a prominent landmark.

The fifth principal transit station is on Fike's hill, a spur of Briary mountain. It is but a few miles -o the north of the village of Cranesville, the line passing only a short distance to the east of that place. From this station the meridian marks were es-
620 tablished by flashes on Evan's hill, and Sickle's hill, to the north—the latter a mile south of Mason and Dixon's line, the southern boundary of Pennsylvania.

This last distance, like all the intermediate ones between the principal stations, was run with the Brunner theodolite.

It was impossible to see the point of intersection of the meridian and Pennsylvania lines from the last transit station, owing to low position. Mason and Dixon's line is here marked by stakes, surrounded by heaps of loose stone, one mile apart from each other. By tracing the line between these marks, its juncture with the meridian was determined. This terminating point is alongside of the turnpike leading from Cranberry summit, on the Baltimore and

Ohio railroad, to Smythfield, in Pennsylvania, and within a few feet of where the road crosses the boundary line of the last State. Its position is therefore easily found. A monument of cut stone designates the spot. Each of the principal stations, and also the intersection of the line with the northwest turnpike and the railroad are marked in the same way. The total length of the western meridian is about 37 miles. With the exception of a few miles along the entire distance, a broad, open cut from twenty to forty feet through a heavily timbered country has been made, which will serve to mark it for many years to come. The gap varies in width according to the size of the timber, and depends much upon the overhanging branches. The trees were felled outward from the line, and a sufficiently broad opening made to prevent the limbs from interfering with an open vista through its length. Within 4,132 feet north of Fairfax Stone, the line crosses the north branch of the Potomac, the stream making a bend to the west and north from the springs, before assuming its general course towards the east. It has a narrow sheet of water there, twenty feet from bank to bank, running through laurel swamps. This point was marked by planting a heavy stake. The meridian starting from one of the highest points of the Alleghanies, has been traced north to the Pennsylvania line over the tops of some of the roughest and most inaccessible portions of those mountains.

It passes over ridges and glades and narrow and pent up valleys of several mountains streams flowing both to the east and to the
621 west, and occasionally through some open field. There were very few clearings along it. In the first place, the country does not become very thickly settled until north of the railroad; and in the second place, many portions of the lands along it are so indifferently poor that as long as so much better is to be found, but little inducement is offered to settle there. Again as so much doubt existed among the inhabitants as to the true position of the line, many were deterred from making any improvements along it. The meridian as traced by me last summer, differs from all previous lines run; some varying too far to the east, others too far to the west. The oldest one, and that generally adopted by the inhabitants as the boundary line, passes to the east; and from measurements made to it I found that it was not very correctly run. The surveyor's compass was used for the purpose, and some incorrect variation of the needle allowed. Owing to the thick and heavy growth of timber, it is utterly impossible to run a straight line through it without first opening a line of sight. It could only be approximately done.

When north of the railroad, and the nearer the Pennsylvania line is approached the settlements and farms become more numerous; and if the meridian line is adopted as the boundary, it will cause great litigation, as the patents of most of the lands call for the boundary as their limits. On the Pennsylvania boundary the new line is about three-quarters of a mile west of the old; on the railroad — feet; at Weill's field, 85 feet; on the northwestern turnpike, about 40 feet; and on the back bone, about 20 feet. The meridian was traced by me, with the assistance of Mr. L. Daser. At all the principal

stations, astronomical observation on north and south stars were made with a Gamby sextant, an artificial horizon for latitude; and also a series of barometrical readings, taken with Green's cistern barometers at many points. These last were often interrupted, however, and no connected or continuous set obtained, owing to the necessity of myself and assistant absenting ourselves from camp, either to establish distance signals or to superintend the cutting out of the line. The necessary computations for getting the heighths of the different mountain points have not yet been made, but a
622 profile of the line will be furnished in connection with the maps of the western meridian whenever authority is granted me to make them. The latitudes have already been completed. Observations with the transit upon the moon and moon culminating stars, to obtain the longitude of the line, during parts of three successive lunations were also made, but the results have not yet been computed. At the same time that I was engaged in tracing and marking the meridian, other field operations were being conducted by my principal assistant surveyor, Mr. de la Camp. I had placed him in charge of a party to survey all the roads, streams, trails and lands in the neighborho-d of the line, and also to sketch in all the general topographical features of the country. In running his line of surveys, he at the same time measured with the vertical circle of the theodolite the angles of elevation and depression of the different courses, so that a true representation of the character of those mountainous regions can be given on the maps. This system of levelling combined with the lines of levels run along the track of the Baltimore and Ohio Railroad; and the barometrical made at the principal stations will furnish a great deal of useful information—supplying the elevations above the level of the sea of many interesting loca points along and in the neighborhood of the line. These surveys were conducted as far as the monument erected on the railroad, although still some incomplete work remains to be attended to south of it. The belt of the country beneath the railroad and the Pennsylvania line has also still to be surveyed along the line. The lateness of the season would not have permitted the completion of this work, even if the necessary funds had been available at the time.

The distances along the line were also measured between Fairfax Stone and Stahl's hill, and stakes between ten and twelve feet high above the ground, and some four inches in diameter, were also planted as marks, in addition to the stone monuments at the principal stations. These monuments varied from four to six feet above the ground, and about two feet square on the base and capped with a small pyramidal stone. The following is a list of monuments, stakes, their localities, and the distances between them, as far as measured or obtained from their differences of latitude:

623

Stations.	Distance in feet.	Latitudes.
Fairfax stone monument	....	39° 11′ 33″ obs.
Stake at crossing of North Branch	4,131	
Stake on Arnold's hill	6,816	
Stake at crossing of Laurel run	9,302	
Monument o- Backbone	15,243	39° 14′ 04″ comp.
Stake at crossing of first branch of Youghiogheny river.	19,704	
Stake on Freeland's hill	22,246	
Stake at crossing of main branch of Youghiogheny river	25,273	
Stake o- John Roth's hill	26,672	
Stake at intersection of Horse Shoe road	29,961	
Stake on Hentze's hill	34,082	
Stake at intersection of Weill's road	37,956	
Stake at intersection of Reinhard's road	41,617	
Monument at intersection of turnpike	45,857	39° 19′ 06″ comp.
Stake at intersection of road to Oakland	49,554	
Stake on Stahl's hill	52,591	
Monument on Lauer hill	62,833	39° 21′ 54″ obs.
Monument on Snaggy hill	106,544	39° 29′ 06″ obs.
Monument on Fike's hill	138,922	39° 34′ 26″ obs.
Mason and Dixon's parallel	192,751	39° 43′ 18″ obs.

The distance from Fairfax stone to Mason and Dixon's line is 36.5 statute miles.

On the 27th of September last, I had the honor to report to the commissioners that the last monument at the intersection of the Western meridian line and Mason and Dixon's line on the 23rd of the same month. The time occupied in tracing and marking the meridianal line was longer than at first calculated upon. The unpropitious weather at the commencement of the work, during the latter part of June, and near the close of our labors, from the 15th to the 22d of September, often prevented all field work. Heavy rains at those times interfered very much with the progress of the survey. The dense growth of timber along the line, the excessively rugged nature of the country, much more so than at first anticipated, the few cleared fields encountered in consequence of the doubt as to the exact locality of the line; the difficulty of transportation, and many other reasons, all caused a great deal of delay, and rendered the expenses of the work much greater than at first estimated for.

624 I beg leave to inform the commissioners of the very able assistance rendered me by my assistants in conducting the field labors, in connection with the marking and tracing of the Western meridian. I would also take this opportunity of officially informing them of the many acts of kindness shown myself and party by all whom we were so fortunate to meet, whilst prosecuting the duties to which, by your request, I have been assigned, and take this method to return our many thanks to them.

Upon returning to Washington my party were all discharged, retaining only Mr. de la Camp, as draughtsman, to complete the unfinished maps of the Eastern Shore section. It will probably take to the end of next January to finish them in toto.

On the 4th of October, 1859, I submitted an estimate, for office work to the commissioners in connection with the plotting of the notes of the surveys during the summer. In reply, I was directed

by them to suspend, for the present, any work upon the maps of the western meridianal line.

In conclusion, I would respectfully offer for your consideration, an estimate for completing the field works on the western line, planting additional monuments, and to make the maps of said line also to trace and mark the Eastern Shore section.

To complete Western section drawings	$3,000.00
To complete field work on Western section, including marking of boundary	1,900.00
To complete Eastern shore section	800.00
Contingencies	300.00
	$6,000.00

This sum total, $6,000.00, has to be divided between two States, requiring from each the sum of three thousand dollars. The probable time it will take to complete the field work and drawings is eight months; and I would request that I may be enabled to commence operations at the very earliest convenient date.

The above estimate is made, supposing the meridian line is the boundary line, or approximately for any other line of a pro-
625 portional length, that may be adopted by the two States, as the nature of the country would in either case be similar.

I am, gentlemen, very respectfully,
Your obedient servant,

N. MICHLER,
Lieut. Top. Engrs. U. S. A., in charge of Survey.

Angus W. McDonald, Esq., Commissioner for Virginia.
Thos. J. Lee, Esq., Commissioner for Maryland.

626 (Doc. No. 21.)

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *August* 20, 1858.

(Extract.)

Special Orders No. 115.

2. In addition to the duty upon which he is already engaged, First Lieut. N. Michler, corps of Topographical Engineers, is placed in charge of the parties to be employed by the States of Maryland and Virginia, to run and mark the boundary line between the two States, and will, by correspondence or otherwise, obtain from the boundary commissioners appointed by the Governors of those States, at whose request he has been detailed, for this special service, any information he may need respecting the same.

The instruments required by Lieut. Michler will be furnished by the Colonel of the corps of Topographical Engineers.

By order of the Secretary of War.

E. D. TOWNSEND,
Asst. Adj't General.

Lt. Michler, Thro' Sec. of the Navy.

627 (Doc. No. 21.)

ELLANGOWAN, POST-OFFICE, *August* 26, 1858.

DEAR SIR: I have but just received your letter. It was marked missent to some other part of the State.

I have written to Angus W. McDonald, Esq'r, Commissioner from Virginia, to request him to meet me at Washington on Tuesday, August 31st, and informed him that I would request you to meet us also.

If there is anything to prevent, let me know.

Yours, very truly and respectfully,

THOS. J. LEE.

Lt. Michler, U. S. Topo. Engineers.

628 (Doc. No. 21.)

WASHINGTON, *D. C., August* 27, 1858.

DEAR SIR: Your letter of yesterday has just been received. There is nothing to prevent my meeting the Commissioner from Virginia and yourself at this place on Tuesday, August 31st, the time you have requested the former to be here. I have the honor to enclose you a copy of the Special Orders, No. 115, from the War Department, assigning me to duty, and will also forward a copy to A. W. McDonald, Esq., Commissioner for Virginia.

I am, sir, very respectfully, your ob't servant,

N. MICHLER,
Lt. Topo. Engrs., U. S. A.

Thos. J. Lee, Commissioner for Maryland.

629 (Doc. No. 21.)

WASHINGTON, D. C., *August* 27, 1858.

DEAR SIR: I have the honor to send you a copy of special orders No. 115, from the war department assigning me to the special service of assisting the commissioners for Virginia and Maryland in tracing and marking the boundary line between the two States. This morning I received a letter from Thomas J. Lee, Esq., commissioner for Maryland, informing me that he had requested you to meet him at this place, on Tuesday, August 31st, and asking me also to have an interview with you both.

There is nothing to prevent my being present at that meeting, and I shall be very glad of the opportunity of consulting with you both.

I feel very much complimented in being detailed for this duty, and trust that I shall be able to perform the service to the entire satisfaction of the commissioners.

I am, sir, very respectfully, your obedient servant,

N. MICHLER,
Lt. Topo. Eng'rs., U. S. A.

A. W. McDonald, Esq., Commissioner for Virginia.

630 (Doc. No. 21.)

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORNSTOWN, ACCOMAC CO., VA., *October* 2, 1858.

SIR: The Commissioners desire that you proceed at once to obtain, by actual survey, as accurately as possible, a plat of the old Scarborough line, traced somewhere about the year 1668, from near the mouth of the Pocomoke to the sounds near the sea; and also a continuation of this line westwardly, along and near the north shore of Pocomoke bay, to Tangier Sound. It is supposed that there are still standing some old marks of the Scarborough line, but that, nevertheless, when these marks do not exist, a close approximation can be had from the limits of the lands of those persons owning adjacent to it.

You will please, therefore, ascertain as you progress, and mark on your plat, as nearly as you can, the names of the proprietors on each side of the line, with the limits of their tracts adjoining it, noting the parts of the line that are now acknowledged and adopted as such, and those parts that may still be in doubt.

It is inferred from documents in possession of the commissioners, that the commission of 1668 did not mark the line west of the Pocomoke, and that in all probability, you will find no marks to guide you. You must, therefore, be governed, in the direction of your line westwardly from the Pocomoke to Tangier sound, by the mean or average direction of the whole line on the east side of the river (the line dividing Worcester from Accomac.) It is equally desirable to note, along this portion of your work, the names of the proprietors and limits on said line of the lands of each, with the location of all dwellings and improvements adjacent, and also the limits of marsh and firm ground, upon the southern side of your line especially. As the preliminary step of the commissioners is merely to obtain the best local information you will to avoid misapprehension on the part of those interested please explain to them the object of
631 your survey.

The originals of your notes and plat you will for the present retain in your possession, subject to the future orders of the commissioners, and transact to each of them a certified copy of the plat, with such explanations as you may deem essential.

To carry out these instructions you will be allowed to employ one

assistant (a surveyor and draughtsman) at a compensation of four dollars per day for the time he may be employed, and such number of laborers as you may deem necessary, having strict regard to economy in your expenditures.

You will please submit an estimate of what amount of funds you will require for the present.

We are, sir, very respectfully,

A. W. McDONALD,
Commissioner for Virginia.
THOMAS J. LEE,
Commissioner for Maryland.

Lieut. N. Michler, U. S. Top. Engrs.

632 *Commission for tracing the Boundary Lines Between Maryland and Virginia.*

HORNTOWN, ACCOMAC COUNTY, VA., *October 4th,* 1858.

SIR: At the conclusion of the preliminary examination you are instructed to make by our letter of October 2d, you will please proceed to Fairfax Stone, at the head of the north branch of the Potomac, as ascertained and identified by us on the 19th September last, and prosecute as far as the season will permit, such astronomical observations as may be requisite to determine the direction of a meridianal line from this point to the Pennsylvania line.

As it is not probable that the whole of this line could be traced this Fall, you will for the present confine yourself to the astronomical part merely, and to establishing as many distant points along the line as you may deem essential, as checks to the surveyors in tracing and marking the same. For which purpose you are authorized to retain the services of your assistant, at the same compensation, and to employ such laborers as you may require. You will please also inform us of the probable amount of funds you may require for this service.

We are, sir, very respectfully,

A. W. McDONALD,
Commissioner for Virginia.
THOMAS J. LEE,
Commissioner for Maryland.

Lieut. N. Michler, U. S. Topo. Eng.

633 (Doc. No. 21.)

EASTON, PENN, *October* 14, 1858.

GENTLEMEN: I have delayed until this time, acknowledging the receipt of the joint instructions of the Commissioners appointed on the part of their respective States, "to trace and mark the boundary lines between the States of Maryland and Virginia," dated at Horntown, Va., on the 3d instant, but now have the honor to do so.

This delay has been in consequence of the sudden and painful bereavement which was so unexpectedly announced to me upon my arrival at Baltimore, after visiting in your company that portion of the boundary line between the Atlantic ocean and Chesapeake bay.

Instead of proceeding to Washington to make arrangements for executing your instructions, as was my intention when leaving you, the bad news hastened my immediate return home.

In obedience to your request, as contained in the instructions above referred to, I would submit for your consideration the following estimate, to meet the necessary expenses of conducting the survey, which you have placed under my directions. The probable length of time for completing the field work will be three months, considering the wooded and rugged nature of a great part of the country through which one of the lines runs. The drawing of the necessary maps in triplicate, a copy for each State, and one for the topographical bureau, will take from six to seven months. For the present, I will, however estimate for a party in the field for two months. By the end of that period of time, the preliminary survey on the Eastern Shore will have been finished, and the season too far advanced into Winter to remain longer at work on the Western line.

634 Pay for one Assistant (surveyor and draughtsman) at $110.00 per month, two months.....	$220.00
Pay for one assistant (computer, &c.,) at $100.00 per month, for one month.....	100.00
Pay for six laborers (chainmen, instrument bearers and axemen) at $1.00 per day each, for sixty days.....	360.00
For transportation of laborers, assistants and instruments, and for provisions, camp equipage and incidental expenses, for sixty days, at $15.00 per day....	900.00
For re-imbursement of personal expenses, transportation of self and baggage.....	170.00
	$1,750.00

This is but a rough estimate for field work, for a portion of the time. For office duties, the sum required will be considerably less, as the assistants alone will be retained, and no expense will arise from transportation, provisions, &c. Although your instructions call for but one assistant, still I have taken the liberty of estimating for two—the additional one to be employed on the Western line. I think the work will progress more rapidly along that portion with his assistance. I trust this suggestion will meet with the approval of the Commissioners.

I shall be in Washington on Monday, the 18th; and should the Commissioners find it convenient to provide me with funds in time, I hope to be able to leave there on the following Wednesday for the Eastern Shore. I would request any communication to be ad-

dressed to the care of Colonel Abert, Bureau of Topographical Engineers, Washington, D. C.

I am, gentlemen, very respectfully, your ob't servant,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A.

A. W. McDonald, Esq., Com'r for Virginia.
Thos. J. Lee, Com'r for Maryland.

635 (Doc. No. 21.)

ELLANGOWAN P. O., BALTO. CO., *October* 16, 1858.

SIR: Your estimate of the funds required by you to comply with the instructions of the Commissioners of the 2d and 4th inst., has been received.

One-half of this sum, which is to be defrayed by the State of Maryland, viz: $875, will be placed at your disposal as soon as I receive information that the estimate is approved by the Commissioner for Virginia.

I am, sir, very respectfully,

THOMAS J. LEE,
Comm'r for Maryland.

Lt. N. Michler, U. S. Topo. Eng'rs, Washington.

636 (Doc. No. 21.)

WINCHESTER, *Oct.* 21, 1858.

DEAR SIR: I received, last night, yours of the 17th inst., covering the copies of the joint instructions. Upon receipt of your former letter of the 14th inst., I wrote at once to Governor Wise, asking him to send you, without delay, a draft for Virginia's share of the estimate. I hope you may have received it before this: if you have or as soon as you do, please let me know, as I wish to appoint and hold another interview with Col. Lee, and we may then join you upon the peninsula, as I incline to think we had better continue the work there until it is completed, than go at so late a period to commence that in the mountains, which cannot be completed this Winter.

If you see Mr. Lee, please show him this.

Yours, respectfully, A. W. McDONALD.

Lt. Michler.

637 (Doc. No. 21.)

BALTIMORE, *Oct.* 28, 1858.

SIR: In addition to the instructions contained in our joint letter of October 2nd, you will please extend your survey to that portion of the islands in Chesapeake bay, through which the Maryland and Virginia boundary is supposed to pass, between Watkins' Point and Smith Point, so as to give the commissioners, as nearly as you

can, the names of the land holders upon each side, with the extent of the lands of each along the line. And as it appears that the United States coast survey topography does not at present include what is now called the mouth of the Potomac river, you will please also include that in your survey.

By joining these detached surveys with the nearest coast survey trig-nometrical point, we will be enabled, with the aid of that triabgulation, to locate them accurately upon a general map, if necessary.

ANGUS W. McDONALD,
Commissioner on the Part of Virginia.
THOMAS J. LEE,
Commissioner for Maryland.

Lt. N. Michler, U. S. Topo. Eng'rs.

Mr. Michler will please send each of us accurate copies of the above by mail. A. W. McDONALD.

638 (Doc. No. 21.)

HORNTOWN, ACCOMAC COUNTY, VA., *November 3rd*, 1858.

GENTLEMEN: I have the honor to acknowledge the receipt of your additional instructions, dated October 28th, 1858, Baltimore. A copy of them for each of you separately, accompanying this communication, which will be sent to each individually. I reached this place on the 28th ultimo (Thursday), during the afternoon. On Friday morning the survey was commenced, but I was soon compelled to suspend operations. At 10 A. M. of that day a violent rain drove the party in, and continued unceasingly until Sunday morning. On Monday we worked all day, the weather being clear and warm. Yesterday morning (Tuesday), a northeast storm set in, and up to the time I write there has been no cessation of rain. From present appearance there is not much prospect of its clearing up. A commencement of the survey, at least, has been made; and from what I can learn, I am convinced that there will not be much difficulty in progressing rapidly, as soon as the weather permits. My party consists of one assistant, Mr. John de la Camp, and five men as chainmen, rodmen and instrument bearers. I will keep you advised, at every favorable opportunity, of the progress made.

I am, gentlemen, very respectfully, Your obedient servant,
N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

A. W. McDonald, Commissioner for Virginia.
Thomas J. Lee, Commissioner for Maryland.

639 Maryland and Virginia Boundary Survey Office.

WASHINGTON, D. C., *May 7th*, 1859.

GENTLEMEN: I have the honor to transmit to each of you a set of accounts, for the fourth quarter of 1858, and first quarter of 1859, covering disbursements to the 31st of March, made whilst in the field during the survey of that portion of the boundary line be-

tween the Chesapeake bay and the Atlantic ocean, and afterwards in the office in constructing the maps of said survey. The vouchers and accounts have been made out in triplicate, one set for each State, and one to be retained by myself. Having received from each commissioner the sum of $875, on the part of their respective States, the sum total amounting to one thousand seven hundred and fifty dollars ($1,750), based on my last estimate, and the amount of expenditures for the two quarters having been $1,049.13, there remained on the 1st of April, a balance on hand, of $700.87. During the month of April the disbursements for office work were $535.12, leaving a balance on hand due Maryland and Virginia, on the 1st of May, of $165.75, sufficient to complete in detail, the maps of the Eastern shore section of the line.

As the season for again taking the field is fast approaching, I would now respectfully submit to your consideration an estimate for running the western boundary, a meridian line from Fairfax's stone, at the head springs of the Potomac north, to its intersection with Mason and Dixon's line, the southern boundary of Pennsylvania. This section is very nearly forty miles in length, crossing several ridges of the Allegheny mountains; it will probably take two months to accomplish the field work, and five months to construct and complete the maps in every detail.

640	For pay of principal assistant (surveyer and draughtsman) seven months, from June 1st to December 31st, 1859, two hundred and fourteen days, at $4.00 per day	$856.00
	For pay of second assistant (surveyor and draughtsman) seven months, at $100 per month	700.00
	For pay of eight laborers (2 chainmen, 2 rodmen, 1 instrument bearer, 2 axemen and 1 cook) for two months, sixty-one days, at $1 each per day	488.00
	For transportation of assistants, instrument bearers and instruments, from Washington, D. C., to boundary line and back	100.00
	For provisions for sixty-one days for ten men, at $5 per day	305.00
	For camp equipage for party	75.00
	For incidental expenses, axes, stationery, etc	51.00
	Sum total	$2,575.00

As the expense of running the line is shared by the two States, this sum of two thousand five hundred and seventy-five dollars has to be divided between them, requiring each to furnish one thousand two hundred and eighty-seven dollars and fifty cents, to meet its portion of the estimate.

I hope the above estimate will meet with the favorable consideration of the commissioners,

I am, gentlemen, very respectfully, Your obedient servant,

N. MICHLER,

Lieut. Top. Eng'rs, U. S. A., in Charge of Survey.

Thos. J. Lee, Comm'r for Maryland.
Angus W. McDonald, Comm'r for Virginia.

641 (Doc. No. 21.)

OAKLAND, ALLEGHANY CO., MD., *August* 17, 1859.

GENTLEMEN: I have the honor to report to you the progress of the survey under my charge, up to this date. The boundary line between the two States has been traced and marked from Fairfax stone to a point a mile north of the Baltimore and Ohio railroad. With the exception of two or three short sections, in all about two miles, an open cut, varying from fifteen to twenty-five feet, has been made through heavy timber, for that distance. One of my assistants, Mr. de la Camp, is at present engaged in measuring the portions completed, placing some additional marks and monuments, and in taking a general topographical sketch of the line. Surveys of the roads and streams in the neighborhood of the line have been extended from the initial point of the work to within a short distance of the railroad. By the end of August I hope to have traced the line to the top of Snaggy mountain, said to be six miles north of the road. During the field survey the work in the office at Washington has also been continued, and my last report from there states that duplicates of the maps of the eastern shore section of the boundary have all been completed except the lettering of titles. In having these duplicates made, I have been compelled to draw from the amount of my last estimate ($2,575, for making and tracing the western section) the sum of $569.61. The work on the line has also taken much more time than at first anticipated—so that I find, in closing up my accounts to this date, it will require $700 more—one-half from each State—to enable me to meet my expenses at the end of this month. I would therefore respectfully request the commissioners to furnish me this amount at their earliest convenience—if possible, by the close of the month. At that time there will be still left from twelve to fifteen miles of the line to trace and mark, and from what I learn, no improvement in character already completed. I should desire to continue the work and finish the whole before leaving the field, but to do this would be
642 constrained to ask for additional means. My force is reduced to the lowest possible limit, ten men in all; and to be able to keep the field during the month of September, in which time the whole line can be marked and traced, I will require the additional sum of one thousand dollars—one-half from each State. It would save considerable expense if I could be allowed to continue the work without interruption. I would respectfully request the commissioners to answer me before the termination of the month on this matter. In case the respective appropriations of the two States are not sufficient, I shall from necessity be obliged to discontinue the work for the present. From the very commencement of the work up to the present time, with but slight exceptions, we have had continuous heavy cutting through the dense woods and over the extremely rugged country; and although I have endeavored to perform the duty entrusted to me with the strictest economy, still I

find it impossible to complete it in the time specified, for the amount asked in my last estimate.

Hoping to receive an early reply,

I remain, gentlemen, very respectfully, Your ob't servant,

N. MICHLER,

Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

Thos. J. Lee, Comm'r for Maryland.
Angus W. McDonald, Comm'r for Virginia.

643 (Doc. No. 21.)

ELLANGOWAN P. O.,
BALTIMORE CO., *August* 20, 1859.

SIR: Yours of the 17th instant has been received, and a copy forwarded to the Governor of Maryland, with the request that the sum of $350 therein named, be placed in my hands at an early day for your use. It will be forwarded to you by mail as soon as received. This leaves but a small balance on hand of the appropriation from my State—not sufficient to finish marking and tracing the boundary according to your estimate.

It is with extreme regret, therefore, that I am constrained to direct that you close your field work at the end of the present month, that the remaining funds may be applied to office work, so as to put the materials on hand in shape to be presented to the Legislature of Maryland at its next session.

You will please leave your field work in such a state as to be easily and economically resumed.

Owing to the absence of the commissioner for Virginia, it is not probable for me to obtain his co-operation in these instructions; but they are not the less imperative, as from the want of funds I can proceed no further with the field work.

I am, sir, very respectfully,

THOS. J. LEE,
Commissioner for Maryland.

Lt. Michler, U. S. Topo. Eng'rs, &c.

644 (Doc. No. 21.)

Maryland and Virginia Boundary Survey.

OAKLAND, ALLEGHANY CO., MD., *August* 23, 1859.

SIR: I have the honor to acknowledge the receipt of your communication of the 20th ult., and will, in accordance with the directions therein contained, discontinue the field work of the survey of the boundary line between the two States at the end of the present month. I will, as soon after as practicable, proceed to Washington, to resume the duties in the office. As Mr. McDonald, the commissioner for Virginia, is expected to reach his home on

the 27th, I will take the liberty to enclose to him a copy of your letter addressed to me, and also one of this reply to yours.

I am, sir, very respectfully, your obedient servant,

N. MICHLER,

Lt. Topo. Engrs, U. S. A., in Charge of Survey.

Thos. L. Lee, Esq., Commissioner for Maryland.

645 (Doc. No. 21.)

Maryland and Virginia Boundary Survey.

OAKLAND, ALLEGHANY CO., MD., *Aug.* 23, 1859.

SIR: I have the honor to enclose to you the reply of Thos. J. Lee, Esq., Comm'r for Maryland, to my communication addressed the Commissioners on the 17th inst., and also my answer of this date. Having been informed, by letter from your son, of your expected return on the 27th, I will direct this communication to Winchester, in hopes it will the sooner reach you.

I am, sir, very respectfully, your obedient servant,

N. MICHLER,

Lt. Topo. Eng'rs, U. S. A.

Angus W. McDonald, Commissioner for Virginia.

646 (Doc. No. 21.)

Maryland and Virginia Boundary Survey.

OAKLAND, ALLEGHANY CO., MD., *August* 30, 1859.

SIR: On the 17th instant, I had the honor to address to the commissioners on the part of the two States, a letter reporting the progress of the survey of the boundary under my charge. Since then the work has been continued to a point on the top of Snaggy mountain, about six miles north of the Baltimore and Ohio railroad. In the same communication, I requested to be furnished with an additional sum of money, three hundred and fifty dollars from each State to enable me to meet my expenses to the end of the present month; also an estimate for completing the survey of the entire line during the coming month of September. My original estimate of $2,575 for tracing and marking the western section of the line, has proved insufficient for several reasons. In the first place, at the request of the commissioner for Maryland, I have had drawn in duplicate a copy for each State, the maps of the Eastern Shore section of the Boundary. To do this, I have had to use out of the funds of my last estimate $569.61, leaving a little over $2,000 for the western section. In the second place, owing to very frequent rains, and at times very prolonged ones, no work could be performed, and in consequence much time lost. The country has also proved much more rugged than at first anticipated, and but few cultivated

fields have up to this time been encountered. The line has, therefore, had to be cut through dense woods for nearly the entire distance. From these various causes, a great deal of delay has been experienced, and the expense of executing the work greater than estimated for. The commissioner from Maryland, in replying to my communication, states he has forwarded a copy of it to the Governor of Maryland, with the request that the sum of $350 therein named, be furnished at an early date for my use, to meet my expenses to the end of this month. He adds, that "this leaves but a small balance on hand of the appropriation from my (his) State, not sufficient to finish marking and tracing the boundary
647 according to your (my) estimate." He is, however, anxious to have the work prosecuted towards completion this fall, if arrangements can be made by you, sir, to enable me to do so.

Having progressed so far in the work, it is very desirable to complete it. The unfinished portion runs through more settled localities, and where there is more interest at stake at present than along the first section. It will also be more economical to continue on than to postpone the work to some other time. As it is only absolutely necessary to trace the line from ridge to ridge, without any collateral surveys, I would respectfully request to furnish an estimate to continue the line in this manner, leaving the subordinate surveys to be carried out at some future time. In addition, therefore, to the $350 asked for from each State, to meet my expenses to the end of the month, I would desire to have $650 more—one half from each State. This will enable me to keep a party of seven in the field during the month of September, in which time the meridian line can be easily finished.

I am, sir, very respectfully, your obedient servant,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

Angus W. McDonald, Esq.

OAKLAND, *August* 30, 1859.

DEAR SIR: In response to your application and estimates for a further supply of funds to complete the field work for the fall, I have only to say that, beyond all question, it will be wise and economical to proceed at once to finish the running of the meridian whilst you are in the field with an organized corps; and believing, do not hesitate to furnish a requisition for Virginia's portion of the funds requisite, and cannot permit myself to doubt that Maryland will fail to keep faith by promptly furnishing her portion.

Respectfully, yours,

A. W. McDONALD,
Commissioner, &c.

Lieut. Michler.

648 (Doc. No. 21.)

Maryland and Virginia Boundary Survey.

OAKLAND, ALLEGHANY CO., MD., *Sept.* 21, 1859.

SIR: On the 30th ultimo, Mr. McDonald, Commissioner for Virginia, passed through this place, and I had the honor of an interview with him. I laid before him my letter of the 17th ultimo to the Commissioners, asking for an additional sum of money, to enable me to meet my expenses to the end of this month, and also an estimate for completing the marking and tracing of the line. I also read to him your reply to the same communication. At his request, I addressed him a letter on the 31st ultimo, a copy of which I beg leave to enclose to you, as well as his reply to the same. In accordance with the letter a requisition has been made by him upon the Governor of Virginia for her share of the necessary amount to enable me to proceed with the work. As it is merely contemplated to mark the line from ridge to ridge until its intersection with Mason and Dixon's, the estimate asked for is very much reduced; and I am sincerely in hopes that you will be able to make such arrangements as to furnish me with Maryland's portion of the funds.

The line is now marked to the top of Snaggy mountain, about six miles north of the railroad, to which point I commenced moving my camp to-day from Oakland. I shall proceed with the means at my disposal, hoping soon to receive the amount of my several estimates, as I shall be in want of money to meet all my expenses to the end of August,

I am, sir, very respectfully, your obedient servant,

N. MICHLER,

Lieut. Topo. Engrs., U. S. A., in Charge of Survey.

Thos. J. Lee, Esq., Commissioner for Maryland.

649 (Doc. No. 21.)

ELLANGOWAN, MARYLAND, *Sept.* 6, 1859.

SIR: I beg to acknowledge the receipt of your letter of September 1st. At your request, and to comply with the wishes of the Commissioner for Virginia, I cheerfully acquiesce in the continuance of the field work as far as your modified estimate will permit, and the amount therein asked for $325, together with the sum of $350, required in your letter of the 2d August, will be forwarded to you as soon as received from the treasurer of Maryland.

As this last requisition exhausts the sum for the present appropriated by the State of Maryland, I must request that you do not exceed this amount.

I am, sir, very respectfully,

THOS. J. LEE,

Commissioner for Maryland.

Lieut. Michler. U. S. Topo. Engrs, in charge of surveys, Maryland and Virginia Boundary.

650 (Doc. No. 21.)

ELLANGOWAN POST OFFICE,
BALTIMORE COUNTY, MD., *September 7th*, 1859.

SIR: Since my letter to you of yesterday's date, I have had the honor and pleasure to receive a communication from the Governor of Maryland, informing me that he would place an additional sum of five hundred dollars to my credit. "In view of the great importance of still continuing in the field at the work, and of the economy in now running the line, and for the reasons set forth in the report of Lieut. Michler (August 17th) which amount, or so much thereof as may be needed, he will pay, if required to enable you (me) to proceed at this time and prevent the delay and further expense of discontinuance and resumption consequent on breaking off at this time." * * * The Governor also expresses his satisfaction at the energy which has been shown in the prosecution of the work, and his hope that it may be completed, or at any rate so far advanced, by the meeting of the General Assembly, as to enable it to take final measures in regard to it.

You will please, therefore, consider my instructions of the 20th August and 6th September, modified so far as these additional means will permit, and should it meet the views of the commissioner for Virginia, if possible, the work to completion.

I herewith enclose a check for $512.50. Please inform me at what time a further sum will be needed.

I am, sir, very respectfully,

THOS. J. LEE,
Comm'r for Maryland.

Lieut. N. Michler, U. S. Topo. Engrs. In charge of Surveys, Md. & Va. Boundary.

651 Maryland and Virginia Boundary Survey Office.

WASHINGTON, D. C., *September 27th*, 1859.

GENTLEMEN: I have the honor to report the return, on this morning, of myself and party to this city, having planted the last monument at the intersection of the meridian line and Mason and Dixon's line, on last Friday afternoon, the 23rd inst. The meridian line, commencing at the Fairfax stone, has been traced and marked throughout its entire length. The survey of roads and streams, in the neighborhood of the line, were discontinued after reaching the Baltimore and Ohio Railroad. It would have been impossible to complete them in time to furnish the maps of the line by the meeting of the Legislatures of the two States. I hope, in the course of a few days, to be able to submit my estimates for mapping the field work.

I am, gentlemen, very respectfully, your obedient servant,

N. MICHLER,
Lieut. Top. Engrs., U. S. A., in Charge of Survey.

Angus W. McDonald, Esq., Commissioner for Virginia.
Thos. J. Lee, Esq., Commissioner for Maryland.

652 (Doc. No. 21.)

Maryland and Virginia Boundary Survey Office.

WASHINGTON, D. C., *October 4th*,, 1859.

GENTLEMEN: I have the honor to submit for your consideration the following estimate for office work, in connection with the recent surveys made in the field during the tracing and marking of the meridian line between Fairfax Stone and the southern boundary of Pennsylvania. The maps in duplicate of the Eastern Shore section of the work have been completed, save the duplicate of the general maps. It is the labor of one draughtsman for fifteen months to make them. To complete the maps of the Western section in duplicate, will take six months for three draughtsmen, if executed in the same style as those of the Eastern Shore section:

For one principal draughtsman for six months at $4 per day	$728.00
Two draughtsmen for six months, at $100 per month for each	1,200.00
For stationery, &c.	75.00
For messenger for six months	72.00
Incidental expenses	25.00
	$2,100.00

One-half of said estimate, $1,050, forms the quota for each State.

So far, the commission has not been at any expense for rent of office, or for the use of instruments, as both have been, and I presume will continue to be furnished by the topographical bureau. One copy of the maps can be had in readiness in about three months. Before commencing office work I shall wait for authority from the commissioners to proceed with the maps, and would respectfully request their early attention to the matter. In case sufficient funds are not now available, I would request that a portion, at least of the estimate be placed at my disposal, and the remainder after any additional appropriation may be made for the purpose by the respective Legislatures of the two States. I would also call the attention of the commissioners to the fact, that although the whole meri-
653 dian line has been traced and marked, still the subordinate surveys of the roads and land in the neighborhood are still incomplete. Should it be their desire to continue them during the coming spring, provision should be made to meet the necessary expense.

I am, gentlemen, very respectfully, your obedient servant,

N. MICHLER,

Lieut. Topo. Engrs., U. S. A., in Charge of Survey.

Thos. J. Lee, Commissioner for Maryland,
Angus W. McDonald, Esq., Commissioner for Virginia.

654 (Doc. No. 21.)

WINCHESTER, *Nov.* 12, 1859.

DEAR SIR: I send a copy of a letter of this date, written to Col. Lee, as the best reply I can make to yours of the 3d instant.

If Col. Lee concurs in the views I have submitted to his consideration, you will perceive the necessity of making an estimate for further funds upon a different basis from the one upon which you predicated those furnished of date the 4th of October last.

The contents of my letter to Col. Lee will excuse me to you, I hope, for the delay which has taken place since I should have answered your last to me.

I am, sir, very respectfully, yours, &c.,

A. W. McDONALD,
Commissioner for Virginia.

Lt. Michler.

655 (Doc. No. 21.)

WINCHESTER, *November,* 1859.

DEAR SIR: Your note of the 3rd inst., reached me on the 7th, since which the anxieties of my friends and relatives in Charlestown have so much engrossed my attention, that I have not found myself, till now, at leisure to send a proper response.

About the 9th of October, Lieut. Michler informed me that estimate for mapping the field work on the western line would be immediately forwarded to each of the commissioners on the 7th of October. I have received yours of the 6th inst., and would have answered it promptly, but waited, expecting from day to day, to receive from Mr. Michler the promised estimates. Before I entertained a doubt that I should receive them, the affair at Harper's Ferry expelled everything else from my attention, until the — ult., when I wrote Lieut. Michler, informing him that his "estimate had not reached me." On the 3rd inst., I received, enclosing a copy of the estimate furnished you, and referred to in yours of the 5th of October, to which I will now reply, believing that the circumstances will excuse me, in your judgment, for the delay they have occasioned. When I wrote as above, I stated to Lieut. Michler, informing him that I had not received the promised estimates.

I reminded him that the joint instructions given him at Horntown required the establishment of the line from Watkins' Point (as ascertained by his survey of the line, from the sea-shore) to Smith's Point, and that I hoped he would not fail to lay down such line upon the general map.

I concur with you, so far as to "direct Lieut. Michler to employ for the present, but one draughtsman (the principal one if he pleases) upon the duplicate general map of the Eastern shore section," but cannot agree to add as you suggest, "and such other work on the section as he may deem most desirable," regarding, as I do, any mapping of the meridian which he has been engaged in run-

ning as entirely supererogatory, unless the States of Maryland and Virginia agree to adopt such meridian as the boundary line, in lieu of the one called for in the charter to Lord Baltimore.

656 I trust you concur with me that the line from Watkins' Point to Smith's Point should be run and laid down on the duplicate general map, and that such general map shall be prepared in time to be presented to the legislatures of our respective States, at their next sessions. We shall have no difficulty, I presume, in making a joint report of the work we have had done, although we may differ as to results ascertained by the work reported. Such difference of views need form no part of the joint report we are required by the law under which we respectively act to make to the States of Maryland and Virginia.

I will forward to Lieut. Michler a copy of this communication, and hope you will send a copy of any reply with which you may be pleased to favor me.

And remain, sir, very respectfully yours,

A. W. McDONALD,
Comm'r for Virginia.

Col. T. J. Lee, Comm'r, for Maryland.

657 (Doc. No. 21.)

ELLANGOWAN P. O.,
BALTIMORE COUNTY, MD., *Nov. 21st,* 1859.

SIR: I have been in correspondence with the Commissioner from Virginia, upon the subject of your estimate, dated October 4th, 1859; and we have concluded that, in lieu of the sum therein proposed by you to be expended in office work, that you employ but one draughtsman upon such work as may be necessary to complete the maps of the Eastern Shore section, postponing for the present the plotting and office work of the N. W. boundary line.

In explanation of our reasons therefor, I enclose copies of two letters from myself to Mr. McDonald, dated October 6th, and November 15th. Mr. McDonald informs me that he has forwarded to you his reply to the first of the above.

You will please, therefore, appropriate any balance you may have in hand of the last remittance (of $500), from the State of Maryland, towards the above object.

I am, sir, very respectfully yours,

THO'S J. LEE,
Commissioner of Maryland.

Lieut. N. Michler, U. S. Topo. Engs., in charge of survey Maryland and Virginia Boundary.

658 (Doc. No. 21.)

ELLANGOWAN P. O.,
BALTIMORE COUNTY, MD., *Oct. 6th*, 1859.

SIR: I have received today from Lieut. Michler, for our consideration, an estimate of funds required by him for office work, in connection with his recent survey, the duplicate of which I take it for granted you have received by this time.

In view of the limited appropriation by my State for this service, and as from the tenor of the conversation we had last, and the fact that there is still some field work unfinished, we can, at most, simply report progress, and not make a final report to our respective Legislatures. I would propose to reduce this estimate, and in lieu of it, to direct Lieut. Michler to employ for the present but one draughtsman, (the principal one if he pleases) upon the duplicate general map of the Eastern shore section, and such other work on the western section as he may deem most advisable.

I shall not be prepared until after the next meeting of our Legislature to employ a larger force.

I shall wait for your reply to acknowledge Lieut. Michler's letter.

I am, sir, very respectfully yours,

THOS. J. LEE,
Commissioner for Maryland.

Angus W. McDonald, Esq., Commissioner for Virginia, Winchester, Va.

659 ELLANGOWAN, P. O.,
BALT. CO., MD., *November* 15, 1859.

DEAR SIR: I beg leave to acknowledge the receipt of yours of Nov'r 12, in answer to mine of Oct. 6th and Nov. 5th.

I received a note from Lieut. Michler, dated Nov'r 3rd, informing me that you desired him to comply with our joint instruction in reference to the survey about Smith's islands, and Smith's Point, to which I at once acquiesced. I am daily expecting to hear of his having left Washington for this purpose. I am equally desirous with yourself that the survey of the Eastern Shore portion of the boundary should be completed this Autumn, if possible. As to the office work necessary to complete the survey of the N. W. Boundary of Maryland, I am willing also to suspend that for the present, owing to the small balance of the appropriation remaining from my State for that purpose, believing it would be more advisable to complete the Eastern Shore section, as that is so well advanced. But in reference to your remarks "regarding as I do any mapping of the meridian as entirely supererogatory, unless the States of Maryland and Virginia agree to adopt such meridian as the boundary line, in lieu of the one called for in the charter to Lord Baltimore," permit me to call your attention to the Act of the General Assembly of Virginia of March 26th, 1858, establishing the joint commission, of which I have the honor to form a part, and to ask, if in your opinion the State of Virginia does not there acknowledge and adopt

the meridian line from the Fairfax stone to the southern line of Pennsylvania, as the boundary between Virginia and Maryland, and direct it to be so established?

I am, sir, very truly and respectfully,

THOS. J. LEE,
Com'r for Maryland.

Angus W. McDonald, Com'r for Virginia, Winchester.

660 *Charter from the Crown of England to the Barons of Baltimore Defining the Confines of the Lands Constituting the Old Colony of Maryland.*

III. Know ye, therefore, that we encouraging with our royal favor the pious and noble purpose of the aforesaid barons of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted and confirmed, and by this our present charter for us, our heirs and successors, do give, grant and confirm, unto the aforesaid Caecelius, now baron of Baltimore, his heirs and assigns, all that part of the peninsula, or chersonese, lying in the parts of America, between the ocean on the east and the bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory or headland called Watkins' Point, situate upon the bay aforesaid, near the river of Wigheo on the west, unto the main ocean on the east, and between the boundary on the south, unto that part of the bay of Delaware, on the north, which lieth under the fortieth degree of north latitude from the aequenoctial, where New England is terminated: And all the tract of that land within the metes underwritten, (that is to say,) passing from the said bay, called Delaware bay, in a right line by the degree aforesaid, unto the true meridian of the first fountain of the river of Pattowmack, thence *verging towards the south,* unto the further bank of said river, and following the same on the west and south, unto a certain place called Cinquack, situate near the mouth of said river, where it disembogues into the aforesaid bay of Chessopeake, and thence by the shortest line unto the aforesaid promontory or place called Watkins' Point; so that the whole tract of land, divided by the line aforesaid, between the main ocean and Watkins' Point, unto the promontory called Cape Charles, and every the appendages thereof, may entirely remain excepted forever to us, our heirs and successors." To all, &c., whereas, &c., now know yee that I, the said Sir Wm. Berkeley, &c., give and grant unto Samuell Smith five hundred twenty and nine acres of land, scituate, lying and being in the county of Northumberland, abutting northerly upon the mouth
of Potomack river, southerly upon little Wickacomico creek,
661 easterly upon ye Mayree bay, and westerly upon a branch that divides this land from a parcell of land comonly called the King's Neck, the said land being due unto the said Samuell Smith by and for the transportation of eleven persons into the colony, &c.

To have and to hold, &c., to be held, &c., yielding, &c., which

payment is to be made seven years after the first grant or sealing thereof, &c., dated ye 18th of March, 1650.

RICHMOND, *October 9th*, 1858.

I certify that the foregoing is an extract from the records of the Virginia Land Office.

S. H. PARKER,
Reg. L. Office.

662 From Volume IV, of Maryland Historical Society's Collection of State Papers, Marked L. C. B., 1669 to 1674, A. M. (pages 63 and 64).

Whereas His Royal Majesty's Commission to the Surveyor General of Virginia, commands, setting out the bounds of Virginia, with a reference to His Majesty's Hon'ble Governor and Council of Virginia from time to time to give advice and order for directing the said Surveyor General to do his duty appertaining to his office, in order thereunto His Majesty's Hon'ble Governor and Council have by letter moved the Hon'ble, the Lord Baltimore's Lieut. General of Maryland to appoint some fitting person to meet upon the place called Watkin's Point, with the Surveyor General of Virginia, and thence to run the divisional line to the ocean sea, etc., the Hon'ble Philip Calvert, Esq., Chancellor of Maryland, being fully impowered by the Honorable Lieutenant General of Maryland, and Edmund Scarbrugh, His Majesty's Surveyor General of Virginia, after a full and perfect view taken of the point of land made by the north side of Pocomoke bay and south side of Annamessex bay have and do conclude the same to be Watkin's Point, from which said point so called, we have run an east line agreeable with the extreamest part of the westernmost angle of said Watkin's Point over Pocomoke river to the land near Robert Holston's and there have marked certain trees which are so continued by an east line running over Swansecates creek into the marsh of the sea side with apparent marks and boundaries which by our mutual agreement according to qualifications aforesaid are to be received as the bounds of Virginia and Maryland on the eastern shore of the Chesapeake bay, in confirmation of which concurrence have set to our hands and seals this 25th day of June, 1668.

(Signed) PHILIP CALVERT. [SEAL.]
" EDMUND SCARBRUGH. [SEAL.]

I, J. Spear Smith, President of the Maryland Historical Society, do hereby certify that the foregoing is a true copy of the original manuscript document now in the archives of said society.

J. SPEAR SMITH,
President M. H. Society.

Baltimore, 25th Sept'r, 1858.

663

WINCHESTER, *Nov.* 18, 1859.

DEAR SIR: I have the honor to acknowledge the receipt of yours of the 15th instant, in which you say: I received a note from Lieut. Michler, informing me that you desired him to comply with our joint instructions in reference to the survey about Smith's island and Smith's point, to which I at once acquiesced, &c. After expressing a desire equal to my own to have the Eastern Shore portion of the boundary completed this autumn, if possible, and your willingness to suspend the office work upon the N. W. boundary, &c., &c., you proceed, after quoting from my letter to Lieut. Michler, as follows—"regarding as I do any mapping of the meridian as entirely supererogatory, unless the States of Maryland and Virginia agree to adopt such meridian as the boundary line, in lieu of the one called for in the charter of Lord Baltimore"—you add: "Permit me to call your attention to the Act of the General Assembly of Virginia of March 26, 1858, establishing the commission of which I have the honor to form a part, and to ask you, if in your opinion the State of Virginia does not there acknowledge and adopt the meridian line from the Fairfax Stone to the southern line of Pennsylvania, as the boundary between Virginia and Maryland, and direct it to be so established?"

I answer you most sincerely and directly that it is not my opinion that the State of Virginia, by the Act of Assembly you refer to, or by any other act does, or ever hath acknowledged and adopted said meridian line from the Fairfax Stone to the southern line of Pennsylvania, as the boundary line between Virginia and Maryland—and it is not my opinion that the State of Virginia, by the said Act of March 26, 1858, directs said meridian line from the Fairfax Stone to the southern line of Pennsylvania, to be established as the boundary between Virginia and Maryland.

I have the honor to remain,

Most respectfully, yours,

ANGUS W. McDONALD,
Commissioner for Virginia.

Col. T. J. Lee, Commissioner for Maryland.

(Endorsed:) Maryland *vs.* West Virginia Defendants Exhibit J.

664 DEFENDANT'S EXHIBIT K.

MARYLAND
vs.
WEST VIRGINIA.

Copy.

Joint Commission with Virginia for Marking the Boundary Lines of the State under Acts of Assembly of March and May, 1852, *and March,* 1860.

Correspondence.

From the Land Office of Maryland.

Cost of Copy, $15.00.

(Endorsed:) Office Supreme Court U. S. Filed Mch. 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

665 Joint commission with Virginia, for Marking the Boundary Lines of the State under Acts of Assembly of March and May, 1852, and March, 1860.

Correspondence.

Prefatory Note.

This book contains all the letters received by me from Angus W McDonald, Esq'r, Commissioner for Virginia, together with such portions of my correspondence with his Excel'cy the Governor of Maryland and others as would be sufficient to give a true statement of the proceedings under the late acts of our Legislature touching the marking of our Boundaries with Virginia.

THOS. J. LEE,
Commissioner for Md.

Baltimore County, Dec. 1, 1861.

STATE OF MARYLAND,
OFFICE OF SECRETARY OF STATE,
ANNAPOLIS, 15 *May,* 1858.

To Thomas J. Lee, Esq.

SIR: I have the honor to inform you that the Governor has appointed you Commissioner on the part of the State of Maryland, to retrace and mark the boundary lines between the States of Maryland and Virginia, in pursuance of the Acts of Assembly of 1852, chapters 60 and 275.

The Governor has notified the Governor of Virginia of this appointment, and so soon as he shall be informed of the appointment of a Commissioner for Virginia, will be ready to give you instructions.

666 The Governor in notifying His Excellency the Governor of Virginia thought proper to suggest the propriety of asking the U. S. Government that some officer of the Engineer Corps in the U. S. Service should be detailed to accompany or co-operate with the Commissioners on the part of the two States, and he now awaits an answer from Richmond.

I am, Sir, Your ob't Serv't,

(Signed) JAMES R. PARTRIDGE,
Sec'y of State.

EXECUTIVE CHAMBER,
ANNAPOLIS, MD., *June* 22, 1858.

Thomas J. Lee, Esq., Comm'r for Md., &c.

SIR: The Governor of Virginia has notified this Department of the appointment of Angus W. McDonald, Senior, to be Commissioner on the part of Va., for marking the Boundary, and he proposes that the Commissioners on both sides should meet at *Washington City* on the 19th day of July next, and that unless the Governor of Maryland notifies him that some other day would be more acceptable to Commissioner of Va., Mr. McDonald will be there then.

I presume you are ready to meet the Commissioner at the time indicated, and you will then be able to make such arrangement, as, when notified by you to the Governor, will enable you to proceed at once to the work.

Be good enough to let me know (at Baltimore) if this suits you.

I am yr. ob't Serv't.

(Signed) JAMES R. PARTRIDGE,
Sec'y of State.

667 CITY OF WASHINGTON, *July* 21, 1858.

His Excellency, the Governor of Maryland.

SIR: I have the honor to state, that on the 13th inst., I wrote to Angus W. McDonald, *Senior*, Esq., Commissioner for Virginia, directing to Romney, Hampshire Co., Va., designating a place of meeting in this city, for Monday last (the 19th inst., as suggested by the Governor of Virginia) to which letter I have received no answer, nor have I as yet had the pleasure of meeting Mr. McDonald, who, I conclude, from diligent inquiry, has not been in this City within the last few days.

I shall therefore return to my residence in Baltimore County, and would beg that another day of meeting may be appointed, or that I may be informed of Mr. McDonald's address, if I am mistaken in supposing it Romney, that I may communicate with him by mail.

I have the honor to be, sir, Your obt. Serv't,

(Signed) THOS. J. LEE,
Comm'r for Maryland.

WINCHESTER, VA. *August* 9, 1858.

DEAR SIR: Your note of the 13th ulto. did not reach my hand 'till the latter part of August when I returned home from Richmond, Va., quite sick, and ever since my health has been such as to deter me from writing to propose a time and place for the interview which is necessary to arrange for the discharge of the trust confided by our respective States.

I feel that I may now venture to say that I will meet you
668 at the "Library of the War Department" upon any day you will appoint, between the 13th and 23rd inst.; if no day between these dates will suit you, I fear that we cannot meet 'till after the 15th of Sept.

I would add however, that upon any day this month, I should be very hapy to see you at my house.

Very respectfully,

ANGUS W. McDONALD,
Comm'r on Behalf of Va.

To Thos. J. Lee, Esq., Comm'r on behalf of Md.

ELLENGOWAN P. O., BALTO. CO., MD., *August* 12, 1858.

Angus W. McDonald, Esq., Comm'r for Virginia.

DEAR SIR: I will meet you at Washington on Wednesday, 18th inst.

A few hours conversation will, I hope, be all that is necessary at present, and I name Washington, as our presence there may eventually be necessary to make many preliminary arrangements.

I trust this will suit your convenience, and pray you to answer me by return mail.

Very truly and respectfully yours,

(Signed) THOMAS J. LEE,
Comm'r on Behalf of Md.

669 The Commissioners accordingly met at Washington on the 18th August, 1858, and had much informal conversation in reference to the prosecuting of their duties—the only official action at this meeting was to address the following joint letter to the Secretary of War.

WASHINGTON, *August* 19, 1858.

Hon. John B. Floyd, Secretary of War.

SIR: The undersigned Commissioners for the States of Virginia and Maryland, to retrace and mark the Boundary Lines between the two States, have the honor to request with the approbation of the Governors of their respective States, the assistance of the General Government; and that the Colonel of the Corps of Topographical Engineers, U. S. Army, be authorized by you to detail an officer of that Corps, skilled in Astronomy, and furnished with the necessary Instruments, to be placed in charge of the parties to be employed upon the above duty.

It is our desire, should our request be granted, that the officer de-

tailed should not be a native, or citizen, of either of the two States we represent.

We desire to proceed with the execution of the work as early as practicable.

We have the honor to be, Sir, very respectfully,

(Signed) ANGUS W. McDONALD,
Comm'r for Va.

(Signed) THOMAS J. LEE,
Comm'r for Md.

The Commissioners then adjourned, August 19, 1858, to await the reply to the above request,—which was sent to them by mail as follows:

670

Special Orders,
No. 115.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Aug.* 20, 1858.

"Extract."

2. In addition to the duty upon which he is already engaged, First Lieutenant *N. Michler*, Corps of Topographical Engineers, is placed in charge of the parties to be employed by the States of Maryland and Virginia, to run and mark the boundary line between the two States; and will, by correspondence or otherwise, obtain from the Boundary commissioners, appointed by the Governors of those States, at whose request he has been detailed for this Special Service, any information he may need respecting the same. The instruments required by Lieutenant Michler will be furnished by the Corps of Topographical Engineers.

By order of the Secretary of War.

(Signed) E. D. TOWNSEND,
Assist. Adj't General.

ELLANGOWAN P. O., *August* 26, 1858.

To A. W. McDonald, Esq., Comm'r, etc.

MY DEAR SIR: You have no doubt received from the Adjutant General, U. S. A., a copy of the order detailing Lieut. Michler for duty with the Commissioners. I wrote to Mr. Michler requesting an interview, but his reply was mis-sent, and reached me too late to comply with his appointment.

671 I will write to him today to meet both Commissioners in Washington on Tuesday next, August 31. Can you make it convenient to be in Washington then; if not, pray let me know when or where will suit your convenience.

Or shall we without further preliminaries meet any early day you may appoint—say at Cumberland, and proceed from thence with Lieut. Michler to identify and establish the "Fairfax Stone."

The point once fixed, Mr. Michler could return and organize his party, (perhaps to better advantage, having seen the ground) and when ready for work, we could re-visit him—or we might continue

our examinations to the Eastern Shore points before the surveying parties are organized.

I am, etc.,

(Signed) THOS. J. LEE,
Comm'r for Md.

WINCHESTER, *Aug.* 28, 1858.

Thos. J. Lee, Esq., Comm'r for Maryland.

MY DEAR SIR: Yours of the 26th inst., is just received. On the 21st the Adjutant General sent me a copy of the order detailing Lieut. Michler for duty with the Commissioners.

Recurring to our understanding, when we parted, I waited to hear from you.

I concur entirely in your suggestion that no further preliminary meeting is requisite, before meeting with Lieut. Michler at our point of starting work.

I propose therefore to meet you and Mr. Michler at New Creek Station, twenty miles west of Cumberland, on 15th of September, to visit and fix the starting point. I think New Creek Station is a better point at which to leave the Rail Road, than Cumberland, or further west of the Station. Let me hear if the time and
672 point of meeting have your approbation, and suits your convenience; if not, I will agree to any change which may suit you better, except that I cannot attend at an earlier day.

Very truly and respectfully yours,

A. W. McDONALD,
Comm'r for Va.

ELLANGOWAN, MARYLAND, *August* 30, 1858.

A. W. McDonald, Esq., Comm'r for Virginia.

MY DEAR SIR: I have written to Lieut. Michler to inform him of our determination to meet at New Creek Station on the 15th of Sept'r.

In the mean time I think such a letter as the enclosed should be sent to him. If this one meets with your approbation, please sign it and forward it as directed. The Army allowance for transportation is, you know, 10 cents per mile, which is more than enough; but as the officer is entitled to it, we should of course allow it. By a regulation, an officer on civil works cannot draw this from the Quartermaster, but draws it from the appropriation for the work. The allowance for personal expenses is usual, and was given to officers on the North Eastern U. S. Boundary and Mexican Boundary, and at present on the N. W. Boundary of the U. S. Owing to the smallness of our appropriation, I must look to the future for any compensation to Lieut. Michler for services, and for that reason, leave that undetermined. We should have the means of recording some proofs of the identity of the "Fairfax Stone." How can that be brought about? How would it do to request the presence of some well known citizens of Maryland and Virginia, living in the neighbor-
673 hood, and acquainted with the locality, who by affidavit or otherwise, could identify the spot? Or how would it do to

publish a notice, in a Cumberland paper, and some Virginia paper in the vicinity, stating that the Commissioners will be there at a certain date, and inviting those interested to attend. If you approve of this pray send me the draft of such a notice as you may think the most proper.

Have you ever seen the report of C. J. Faulkner to Governor Floyd of Virginia in 1832 on the N. W. Boundary. He refers there to a paper in the Archives of Virginia (No. 22 of his report) the original journal of a journey of the Commissioners, Surveyors &c., from the head spring of the Rappahannock to the head spring of the Potomac, in 1746, as giving the only authentic narrative now extant of the planting of the Fairfax Stone. And also (No. 24) a manuscript map of the head spring of Potomac River by Col. Geo. Mercer, of Gen'l Washington's Regiment in 1756.

I think we ought to have these documents, if possible, and would beg you to endeavor to procure them.

Very truly & resp'y Yours,

THOS. J. LEE,
Comm'r for Maryland.

Enclosed in the Above.

To Lieut. N. Michler, U. S. Top'l Engineers.

SIR: The Commissioners for the States of Maryland and Virginia, have the honor to acknowledge the receipt of your communications to each respectively, reporting your having been detailed by the Adj't General, U. S. Army, in consequence of their application to the Federal Government to assist them in their duties of surveying, tracing and marking the boundary lines between the two States.

674 It is the desire of the Commissioners that the surveying and tracing of these lines should be based upon points determined by the best Geodetic methods, and it will be their pleasure to give you all the assistance you may require to measure a high degree of accuracy in your determinations.

You will be pleased, therefore to submit to them at an early day, an estimate of the probable number of persons you will require to compose the surveying parties, with the duties and compensation of each, and the probable length of time they will be employed, including transportation and subsistence.

In addition to such compensation as the Executives of our respective States may grant you for your services, the joint Commission will, for the present, defray all your personal expenses whilst the surveys are in progress, or whilst travelling on duty, with the usual army allowance for transportation.

We remain respectfully,

(Not signed or sent.)

WINCHESTER, *Sept.* 1, 1858.

To Thomas J. Lee, Esq., Comm'r for Maryland.

MY DEAR SIR: Yours of the 30th ulto. is received. The letter to Lieut. Michler which you send enclosed, is, in my opinion, very

proper in itself, and some such communication to him from us jointly indespensible. But on looking to the law under which I received my appointment from the Governor of Virginia, and into the authority conferred by the terms of the Commission sent to me, I can find no warrant for my taking the responsibility, which, by signing such a letter, I shall assume. I shall write today to the Governor of Virginia submitting the subject to his consider-
675 ation, and asking his instructions, or that the necessary power to act upon the case in hand, and such analogous ones as may arise, be at once conferred.

As soon as I receive his reply I will write to you. It is possible it may not reach me in time, before the 15th inst., the day agreed upon to meet at New Creek Station, in which event it will be most convenient to confer the subject at that time and place.

In regard to the propriety of giving public notice of the day when we are to meet at the Fairfax Stone, and inviting the attendance of those interested, I have no objections to urge, and submit to you to prepare such a notice and have it published at once in the Cumberland (Allegheny Co., Md.) and Piedmont (Hampshire Co., Va.,) newspapers.

I know in Virginia several persons who can identify the Fairfax Stone, and shall be glad if you will find in Maryland, one or more who will meet us there at the appointed time, say at mid-day on the 18th inst. I will endeavor to procure such documentary evidence for identifying the *point* at which we *should find* the Fairfax Stone, as will be satisfactory.

I am, dear Sir, Very respectfully,
Your obe't Serv't,
(Signed) A. W. McDONALD,
Comm'r for Virginia.

ELLENGOWAN, MARYLAND, *Sept.* 3, 1858.

To A. W. McDonald, Comm'r for Virginia.

DEAR SIR: I beg to acknowledge the receipt of yours of the 1st inst.

I will endeavor to find some one or more suitable persons from Maryland to meet us at the appointed time at the Fairfax Stone.

Should I succeed, a public notice will perhaps be unneces-
676 sary unless you desire it.

Very resp'y yours,

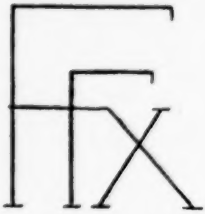
THOS. J. LEE,
Comm'r for Maryland.

The Commissioners and Lieut. Michler U. S. Top'l Engineers, accordingly met at New Creek, Va., and proceeded thence to Winston, Allegheny Co., Md., the residence of Philip Pendleton, Esq., and from thence, on the 18th September, under the guidance of John Conoway, an old resident, to the locality of the Fairfax Stone, at the head spring of the North Branch of the Potomac.

The spot and stone were readily recognized and identified, September 19, by the Commissioners, and the following gentlemen who

did them the honor to accompany them, viz, Lieut. Michler, James R. Partridge, Esquire, Secretary of State of Maryland; Hugh Lennox Bond, Esq., of Baltimore, Philip Pendleton, Esq., of Allegheny Co., Md.; and John Coneway, the Guide.

The Stone is rough hewed, stands some two feet out of the ground, and is marked thus.



It was not disturbed.

This duty performed, the Commissioners separated until the 30th September, when in company with Lieut. Michler they proceeded to the Eastern Shore of Maryland and Virginia.

Whilst at Horn Town, Va. the following instructions for commencing the duty entrusted to them were agreed upon.

677 HORN TOWN, ACCOMAC CO., VA., *October* 2, 1858.

To Lieut. N. Michler, U. S. Topographical Engineers.

SIR: The Commissioners desire that you proceed at once to obtain by actual survey, as accurately as possible, a plat of the old Scarborough line, traced somewhere about the year 1668 from near the mouth of the Pocomoke to the Sounds near the sea; and also a continuation of this line westwardly and along and near the north shore of Pocomoke Bay to Tangier Sound.

It is supposed that there are still standing some old marks of the Scarborough line, but that nevertheless where these marks do not exist, a close approximation may be had of it from the limits of the lands of those persons owning adjacent to it.

You will please, therefore, ascertain as you progress and mark your plat, as nearly as you can, the names of the proprietors on each side of the line, with the limits of their tracts adjoining it, noting the parts of the line that are now acknowledged and adopted as such, and these parts that may be still in doubt.

It is inferred from documents in possession of the Commissioners, that the Commission of 1668, did not mark the line west of the Pocomoke, and that in all probability you will find no marks to guide you. You must therefore be governed in the direction of your line westwardly from the Pocomoke to Tangier Sound by the mean or average direction of the whole line on the East side of the River, the line dividing Worcester from Accomac.

It is equally desirable to note along this position of your work the names of the proprietors and the limits on said line of the lands of each, with the location of all dwellings and improvements adja-

cent, and also the limits of marsh and firm ground upon the Southern side of your line especially.

678 As this preliminary step of the Commissioners is merely to obtain the best local information, you will, to avoid misapprehension on the part of those interested, please explain to them the object of your survey.

The originals of your notes and plat you will for the present retain in your possession subject to the future orders of the Commissioners, and transmit to each of them a certified copy of the plat, with such explanations as you may deem essential.

To carry out these instructions, you will be allowed to employ one assistant (a surveyor or draughtsman) at a compensation of four dollars per day, for the time he may be employed, and such number of laborers as you may deem necessary, having strict regard to economy in your expenditures.

You will please submit an estimate of what amount of funds you will require for the present.

We are, Sir, very respectfully,

(Signed) A. W. McDONALD,
Comm'r for Va.

(Signed) THOS. J. LEE,
Comm'r for Md.

HORN TOWN, ACCOMAC CO., VA., *October* 4, 1858.

To Lieut. N. Michler, U. S. Topographical Engineers.

SIR: At the conclusion of the preliminary examination, you are instructed to make by our letter of October 2nd, you will please proceed to the "Fairfax Stone" at the head of the North Branch of the Potomac, as ascertained and identified by us on the 19th September last, and prosecute as far as the season will permit,

679 such astronomical observations as may be requisite to determine the direction of a meridional line from this point to the Pennsylvania line.

As it is not probable that the whole of this line could be traced this fall, you will, for the present, confine yourself to the astronomical part merely, and to establishing as many distant points along the line as you may deem essential, as checks to the Surveyor in tracing and marking the same.

For which purpose you are authorized to retain the service of your assistant, at the same compensation, and to employ such laborers as you may require.

You will please, also, inform us of the probable amount of funds you will require for this service.

We are, Sir, very respectfully,

(Signed) A. W. McDONALD,
Comm'r for Virginia.

(Signed) THOS. J. LEE,
Comm'r for Maryland.

On the 5th of October, the Commissioners adjourned for the present.

ELLANGOWAN, MARYLAND, *October* 16, 1858.

To A. W. McDonald, Esq., Comm'r for Virginia.

SIR: I have this day received from Lieut. Michler, U. S. Top'l Engineers, an estimate for funds required by him to comply in part with our instructions of the 2nd and 4th insts.

I have written to Lieut. Michler to say, that the half of this to be defrayed by the State of Maryland, viz., eight hundred and seventy dollars, is now at his disposal, provided his estimate meets with your approbation.

I am, Sir, very respectfully,

(Signed) THOS. J. LEE,
Comm'r for Maryland.

680 Lieut. Michler informed me by letter Oct. 23rd, that he had received from the Secretary of the Commonwealth of Virginia, the sum of eight hundred and seventy-five dollars, and on the 27th of October commenced his surveys on the Eastern Shore of Md. and Va.

The Commissioners met again at Baltimore, October 28th, and addressed the following additional instructions to Lieut. Michler.

BALTIMORE, *Oct.* 28, 1858.

SIR: In addition to the instructions contained in our joint letter of October 2nd, you will please extend your survey to that portion of the Islands in Chesapeake Bay through which the Maryland and Virginia Boundary is supposed to pass between Watkins' Point and Smith's Point, so as to give the Commissioners, as nearly as you can, the names of the Landholders upon each side, with the extent of the Lands of each along the line.

And as it appears that the U. S. Coast Survey topography does not at present include what is now called the mouth of the Pocomoke River, you will please also include that in your survey.

By joining these detached surveys with the nearest Coast Survey Trigonometrical points, you will be enabled with the aid of that triangulation to locate them accurately upon a general map if necessary.

(Signed) A. W. McDONALD,
Comm'r on the Part of Va.

(Signed) THOS. J. LEE,
Comm'r on the Part of Md.

Lieut. Michler continued in the field with his surveying party until November 27th, when he reported as follows—

681 WASHINGTON, D. C., *Dec'r* 3, 1858.

DEAR SIR: On Wednesday I returned to this city from the Eastern Shore, having completed our labors there on last Saturday. Notwithstanding the constant rains, and at times extremely cold weather, I was enabled to carry out your instructions, with the exception of actually visiting Smith's Islands. Several attempts were

made to do so, but the storm on the Bay prevented us from reaching the Island. I was enabled, however, to connect by triangulation with the other portions of our survey, three out of the four houses near the line crossing the Islands.

The average course of the line between the sea coast and the Pocomoke is N. 87° 15′ East, Magnetic; this prolonged to Tangier Sound, passes through Somers' Cove to Jones' Island, about 850 feet south of the coast survey signal there.

I have already commenced work at the maps, but owing to the great amount of material collected, it will take some time to complete them.

Yours very truly, N. MICHLER.

To Thos. J. Lee, Esq., Ellangowan, Md.

I had no opportunity of meeting the Commissioner for Virginia during the winter (nor until Sept. 13, 1859, as will be seen further on) owing to his absence in Missouri.

Lieut. Michler kept me advised from time to time of the progress of the office work, and on the 16th May forwarded an estimate of the survey of the N. W. Boundary line from the "Fairfax Stone" amounting to $2575, for the two States—informing me also of the continued absence of Mr. McDonald.

682 I directed Lieut. Michler to continue his preparations to carry out our joint instructions of Oct. 4th, as though the Commissioner for Virginia were present.

On the 14th May, Lieut. Michler wrote as follows, "I received a "letter dated, Hannibal, Missouri, March 10th from Mr. McDonald. "He says he does not think his presence necessary on the Meridian "Line while I am running it, and wants to know if I am at work or "not, and to inform him when I will reach the northern terminus. "He tells me not to wait for him, as the instructions received from "you both renders it unnecessary to give any additional ones till the "Meridian is run."

On the 24th May, I had the honor, in company with Lieut. Michler, to present to His Excellency the Governor of Maryland, for his inspection, the maps of the Eastern Shore portion of our work, as far as finished.

I also received from the Comptroller of the State a draft for $1287 50/100 the half of Lieut. Michler's last estimate, which I transferred to him with verbal instructions to proceed with his survey of the N. W. Boundary line.

On June 9th, 1859, Lieut. Michler informed me of his arrival at Oakland, Allegheny Co., Md.—of his having received a draft for Virginia's moiety of his estimate and of the continued absence of the Commissioner for Virginia.

Having heard of Mr. McDonald's return I wrote to him as follows:

ELLANGOWAN, MARYLAND, *September* 9, 1859.

A. W. McDonald, Esq., Comm'r for Virginia.

SIR: On the 20th August, I received a report from Lieut. Michler, dated 17th August, informing me that his estimate for tracing

and marking the meridian line from the Fairfax Stone would fall short $700 ($350 from each State, for the month of August, and in order to keep his parties in the field during the month of September, during which time he hoped to complete the line, he would
683 require an additional sum of $500 from each State.

I immediately wrote to him to say that I would place the sum of $350 to his credit; but that as the additional sum required exceeded the balance on hand of the amount appropriated by Maryland, I was obliged, (it being impossible for me to communicate with you, owing to your absence at the West,) to direct that, as far as Maryland was concerned, he should close his work in the field.

I also wrote a private note to you at Winchester, Va., to invite you to a conference upon your return home, with the hope of falling upon some plan of continuing the work to completion. Since which I have received a second report from Lieut. Michler, informing me that he had seen you on your way from the West, and that you had agreed upon a reduced estimate for the continuation of the work, requesting my approval and a remittance of $350 for this purpose.

This reduced sum being within the balance on hand, I at once wrote would be forwarded to him.

After writing this last communication to Lieut. Michler, I had the honor to receive from His Excellency, the Governor of Maryland, information, that owing to his great desire to continue the survey of this line as far as lay in his power, he would place to my credit from another fund, an additional sum of $500. Of this, I at once wrot to Lieut. Michler, and I have now the honor to inform you that should Lieut. Michler's last estimate prove insufficient I am now prepared to continue the work as far as the above sum of $500 will permit.

You may recollect that in informal conversation with you, I was fearful that the sum appropriated by the State of Maryland might be insufficient to complete the work we were engaged upon, before an additional appropriation could be obtained from our Legislature. I now trust that this additional sum will enable me to co-operate with you in completing without interruption, the survey Lieut. Michler is now engaged upon.

I am ready to confer with you upon matters relating to our
684 public duties at any time or place you may designate.

I am, Sir, very respectfully,

(Signed) THOS. J. LEE,
Comm'r for Md.

RELAY HOUSE, SATURDAY, *Sept.* 11, 1859.

To T. J. Lee, Comm'r for Maryland.

DEAR SIR: Yours of the 9th inst. received yesterday, expresses the wish for a conference, leaving the time and place to me. I will meet you in Washington City, at Winder Building, Lieut. Michler's room, on Monday next, at 2 P. M. Have not time to be more formal and particular.

Respectfully,

(Signed) A. W. McDONALD,
Comm'r for Va.

The Commissioners met accordingly at Washington on the 13th September, and interchanged informally their views as to the true location of both boundary lines, and discussed the points upon which they might be likely to differ.

ELLANGOWAN, MARYLAND, *Oct.* 6, 1859.

Angus W. McDonald, Esq., Comm'r for Virginia.

SIR: I have received today, from Lieut. Michler, for our consideration, an estimate of funds required by him for office
685 work in connection with his recent surveys, the duplicate of which I take it for granted you have received by this time.

In view of the limited appropriation by my State for this service, and, as, from the tenor of the conversation we last had, and the fact that there is still some field work unfinished, we can at most, simply report progress, and not make a final report at the coming sessions of our respective Legislatures, I would propose to reduce this estimate, and in lieu of it, to direct Lieut. Michler to employ for the present but one draughtsman, the principal one if he pleases, upon the duplicate general map of the Eastern Shore section, and such other work, on the Western section as he may deem most advisable.

I shall not be prepared until the next meeting of our Legislature to employ a larger force.

I await your reply to acknowledge Lieut. Michler's letter.

I am, Sir, very respectfully,

(Signed) THOS. J. LEE,
Comm'r for Maryland.

ELLANGOWAN, MARYLAND, *Nov'r* 5, 1859.

Angus W. McDonald, Esq., Comm'r for Virginia.

SIR: I had the honor to address you a note on the 6th ult., directing to Winchester, Va., proposing for your consideration certain reductions to estimate submitted to me by Lieut. Michler for office work in connection with his recent surveys upon the Meridian Boundary line between Maryland and Virginia, from the Fairfax Stone.

I beg to remind you that I have had no reply to that communication.

I am, Sir, Very respectfully,

(Signed) THOS. J. LEE,
Comm'r for Maryland.

686 WINCHESTER, *Nov.* 12, 1859.

Col. T. J. Lee, Comm'r for Maryland.

DEAR SIR: Your note of the 5th inst., reached me on the 7th, since which the anxieties of my friend- and relatives in Charlestown, have so much engrossed my attention, that I have not found myself till now at leisure to send a proper response.

About the 5th of October, Lieut. Michler informed me that estimates for mapping the field work on the western line would be immediately forwarded to each of the Commissioners.

On the 7th October, I received yours of the 6th and would have answered it promptly but waited, expecting from day to day to receive from Lieut. Michler the promised estimates—before I entertained a doubt that I should receive them, the affair at Harper's Ferry expelled everything from my attention until the — ulto. when I wrote to Lieut. Michler informing him that his estimates had not reached me; on the 3d inst., I received a communication from him, enclosing a copy of the estimates furnished you, and referred to in yours of the 6th October, to which I will now reply, believing that the circumstances will excuse in your judgment the delay they have occasioned.

When I wrote, as above stated, to Lieut. Michler, informing him that I had not received the promised estimates, I reminded him that the "joint instructions" given him at Horn Town, required the establishment of the line from Watkins' Point (as ascertained by his survey of the line from the sea shore) to Smith's Point, and that I hoped he would not fail to lay down such line upon the General map.

I concur with you so far as to "direct Lieut. Michler to employ "for the present but one draughtsman (the principal one if he "pleases) upon the duplicate General Map of the Eastern Shore "Section, but cannot agree to add as you suggest and such other
"work on the Western Section as he may deem most ad-
687 "visable," regarding as I do any mapping of the meridian
which he has been engaged in running as entirely supererogatory, unless the States of Maryland and Virginia agree to adopt such meridian as the boundary line, in lieu of the one called for in the charter to Lord Baltimore.

I trust you will concur with me that the line from Watkins' Point to Smith's Point, should be run and laid down on the duplicate general map, and that such general map should be prepared in time to be presented to the Legislatures of our respective States, at their next Sessions. We shall have no difficulty, I presume, in making a joint report of the work we have had done, although we may differ as to the results ascertained by the work reported. Such difference of views need form no part of the joint report we are required by the law under which we respectively act to make to the States of Maryland and Virginia.

I will forward to Lieut. Michler a copy of this communication, and hope you will send him a copy of any reply which you may be pleased to favor me,—and remain, sir

Very respectfully, Yours,

(Signed) A. W. McDONALD,
Comm'r for Virginia.

ELLANGOWAN, MARYLAND, *November* 15, 1859.

A. W. McDonald, Esq., Co nm'r for Virginia.

DEAR SIR: I beg leave to acknowledge the receipt of yours of Nov'r 12th, in answer to mine of the 6th Oct'r and 5th November.

I received a note from Lieut. Michler dated Nov'r 3rd, informing me that you desired him to comply with our joint instructions, in

reference to the survey about Smith's Island and Smith's Point, to which I at once acquiesced. I am daily expecting to hear of
688 his having left Washington for this purpose.

I am equally desirous with yourself that the Survey of the Eastern Shore portion of the Boundary should be completed this autumn if possible.

As to the office work necessary to complete the survey of the N. W. Boundary of Maryland, I am willing also to suspend that, for the present, owing to the small balance of appropriation remaining from my State for that purpose, believing it would be more advisable to complete the Eastern Shore Section, as that is so well advanced. But in reference to your remarks "regarding as I do, any mapping of the "meridian,"—as entirely supererogatory unless the "States of Mary-"land and Virginia agree to adopt such meridian as the Boundary "line in lieu of the one called for in the charter to Lord Baltimore," permit me to call your attention to the Act of the General Assembly of Virginia of March 26th, 1858, establishing the Commission of which I have the honor to form a part, and to ask if, in your opinion, the State of Virginia does not there acknowledge and adopt the meridian line from the Fairfax Stone to the Southern line of Pennsylvania as the boundary between Virginia and Maryland, and direct it to be re-established?

I am Sir, Very truly & resp'y Yours,
(Signed) THOS. J. LEE,
Comm'r for Maryland.

WINCHESTER, *Nov.* 18, 1859.

To Col. T. J. Lee, Comm'r for Maryland.

DEAR SIR: I have the honor to acknowledge the receipt of yours of the 15th inst., in which you say "I received a note from Lieut. "Michler informing me that *that* you desired him to com-
689 "ply with our joint instructions in reference to the survey "about Smith's Point and Smith's Island to which I at once "acquiesced, &c., &c., &c."

After expressing a desire equal to my own to have the Eastern Shore portion of the Boundary completed this autumn if possible, and your willingness to suspend the office work upon the N. W. Boundary, &c., &c., you proceed after quoting from my letter to Lieut. Michler, as follows, "regarding as I do any mapping of the "Meridian as entirely supererogatory unless the States of Maryland "and Virginia agree to adopt such meridian as the boundary line "in lieu of the one called for in the charter to Lord Baltimore"—you add, "Permit me to call your attention to the Act of the General "Assembly of Virginia of March 26th, 1858, establishing the com-"mission of which I have the honor to form a part, and to ask you "if in your opinion the State of Virginia does not there acknowledge "and adopt the meridian line from the Fairfax Stone to the Southern "line of Pennsylvania, as the boundary between Virginia and Mary-"land, and direct it to be so established?"

I answer you most sincerely and directly that it is not my opinion—That the State of Virginia, by the Act of Assembly you

refer to, or by any other Act, does or ever hath acknowledged and adopted said meridian line from the Fairfax Stone to the Southern line of Pennsylvania, as the boundary line between Virginia and Maryland, and it is not my opinion that the State of Virginia by the said Act of March 26th, 1858, directs said meridian line from the Fairfax Stone to the Southern line of Pennsylvania to be established as the boundary between Virginia and Maryland.

I have the honor to remain,

Most respectfully Yours,

(Signed) A. W. McDONALD,
Comm'r for Virginia.

690 ELLENGOWAN, MARYLAND, *November* 21, 1859.

To Lieut. Michler, U. S. Top'l Engineers.

SIR: I have been in correspondence with the Commissioner for Virginia upon the subject of your estimate, dated Oct. 4, 1859, and we have concluded that in lieu of the sum there proposed by you to be expended in office work that you employ but one draughtsman upon such work as may be necessary to complete the map of the Eastern Shore section, postponing for the present the plotting and office work of the N. W. Boundary line. In explanation of our reasons therefor *in* enclose copies of two letters from me to Mr. McDonald, dated Oct. 6 and Nov. 15. Mr. McDonald informs me that he has forwarded to you his reply to the first of the above.

You will please therefore, appropriate any balance you may have on hand of the last remittance from Maryland, towards the above object.

Very respectfully Yours,

(Signed) THOS. J. LEE,
Comm'r for Maryland.

ELLANGOWAN, BALTIMORE CO., *Dec'r* 8, 1859.

His Excellency Governor Hicks:

(Extract.)

* * * * * * *

The views of the Commissioner for Virginia as to the true location of the North Western Boundary of the State, which he communicated informally to me, are entirely new, and I conceive utterly untenable. I would not refer to them now, if he had not again alluded to them in a recent official letter to me.

691 The position he takes is founded upon the phrascology of our charter, when after defining the Northern Boundary as the 40th parallel as far as the meridian of the "first fountain" of the Potomac, the description is continued in the words "thence verging towards the south unto the further bank of said river", and it is, that such a line is not necessarily a due north and south line, but a line which will reach, in any southerly direction, the furthest bank of the Potomac at the shortest distance from the N. W. angle so defined.

From an inspection of Lucas' map of Maryland, this point of intersection might be placed somewhere about Piedmont, on the Balto. & Ohio Railroad, throwing most of Alleghany County west of this into Virginia.

In answer to this it will not be necessary for me to refer to any of the arguments in the long continued controversy between the two States, as to the true position of the "first fountain" of the Potomac. There never were up to this time, any doubts expressed as to the *direction* of this line by either party. Its beginning was the only contested point.

Maryland, of her own accord, put an end to the controversy by assuming the "Fairfax Stone" as the initial point (Act of May 27, 1852) and Virginia, in her Act of March 26, 1858, establishing the present commission, distinctly acknowledges and adopts the *Meridian Line* from the Fairfax Stone to the Southern line of Pennsylvania, as the boundary between the two States, and directs it to be so established.

The duties of the present Commissioners are simply to carry these Acts of our respective Legislatures into effect; we have no right to look beyond them.

The wording of these Acts in their description of this portion of the boundary is very explicit; in their reference to the South Eastern boundary it is unfortunately quite the reverse, and hence the difficulty in that quarter.

* * * * * * *

I have the honor to be &c.,
(Signed) THOS. J. LEE,
Comm'r for Maryland.

692 The Commissioners met at Washington on the 20th & 21st of December, 1859, and agreed upon and signed a joint report to their respective Legislatures showing the progress made in their duties. It was also understood that each was at liberty to submit to the inspection of the members of their Legislatures the unfinished drawings then in the office, with the understanding that they were to be returned.

ELLANGOWAN, MARYLAND, *March 6th*, 1860.

Wrote to Mr. *Mc.* McDonald, directing to Winchester, sending extracts of the Act passed by the Legislature of Maryland, then in session—in conclusion said—I take the earliest opportunity in transmitting the above extract for your information, as you, no doubt will be as much gratified as I have been, at the prospect this Act opens, of settling these lines, to the satisfaction of all concerned, in both States.

WASHINGTON, *April* 10, 1860.

Angus W. McDonald, Esq.

MY DEAR SIR: Lieut. Michler informs me that he has just received a note from you, from which it seems that the copy of the Act of the Legislature of Maryland, in relation to her boundaries with

Virginia (or rather extracts from it) which I sent you early last month directing Winchester, Va., did not reach you.

I wrote as soon as I had information of the passage of the Bill, but was not aware of your being in Richmond. I now enclose a copy of the whole Act, and will take an early opportunity of requesting the Governor of Maryland to forward to you, or to the Governor of Virginia a properly authenticated copy.

I would be much pleased to have an interview with you, previous to your departure for the West, and would name some day at the end of this week, say Friday or Saturday; if not, at any time after the 19th of this month for on Monday next, the 17th, I have to
693 be upon the Eastern Shore of Md., upon a question of boundary between two of our counties.

Be so good as to direct as usual to Ellangowan, Md.

Very truly & resp'y Yours,

(Signed) THOS. J. LEE.

ELLANGOWAN, MD., *April* 12, 1860.

A. W. McDonald, Esq., Commissioner, etc.

DEAR SIR: The occasion I referred to in my letter to you, of the day before yesterday, for which I was obliged to visit the Eastern Shore of Maryland, has been postponed until May 1.

I can therefore meet you in Washington at any time it may suit your convenience until the 27th of this month. In view of the approaching transfer of Lieut. Michler to other duty, it is a matter of some importance (to me at least) that we should have a meeting before his departure.

I would like to be informed what action, if any, the last General Assembly of Virginia took, in relation to our Commission. I sent you in my last a copy of an Act passed at the last meeting of our Legislature.

Very truly & resp'y Yours,

(Signed) THOS. J. LEE.

WINCHESTER, *April* 17, 1860.

Col. T. J. Lee, Commissioner, etc.

DEAR SIR: On my return from Hampshire on Saturday evening, I found yours of the 10th and of the 12th inst. I tender my thanks for the copy of the recent Act of the Maryland Legislature upon the subject of the Boundary lines between the two States. Your copy gave me the first notice of the provisions of the said act.

I am surprised to learn from it, that Maryland has under-
694 taken, by declaratory legislation, to settle, (in advance of any joint report upon either line) the line across the Bay and the line of her Western Boundary, and can only express the hope, that this step taken by your legislature, may prove no obstacle of an early adjustment of the question referred by both States, to the joint Commission to act and report upon, preliminary to final action by either State.

Virginia passed no act that I am aware of, upon the subject, except by resolution, to direct, that as much of the sum of one thou-

sand dollars, as might be requisite to pay her portion of the expense of erecting suitable monuments along the line, from the Bay to the sea, as reported and mapped, should be used for that purpose.

By another resolution, she advised the Governor to send to England, an agent to procure all documentary and other evidence, which might tend to establish the true lines of Boundary between her, and the States of North Carolina, Tennessee, and Maryland.

I am sorry that I cannot have an early conference with you, but am compelled to start the day after tomorrow for Missouri, to be absent some 12 or 14 days. But will meet you on the night of the 4th of May at Willards Hotel, in Washington, if no accident intervene to prevent—if there should, I will telegraph to change the day, in time to prevent a fruitless trip on your part. If the day will not suit, you can change it to a later one, not beyond the 6th, and advise me by letter, to my address at Hannibal, Missouri.

Very respectfully, Yours,

(Signed) A. W. McDONALD.

ELLANGOWAN, MARYLAND, *April* 20, 1860.

Col. A. W. McDonald, Commissioner, etc.

DEAR SIR: I have received to day yours of the 17th inst., I will be in Washington City on Saturday or Monday, 5th and 7th
695 of May, for the purpose of having a conference with you. You will find me at Lieut. Michler's room in Winder building.

I am desirous of coming to some understanding, at an early day, as to future arrangements for the prosecution of the work entrusted to us. This I think might be better done by conferring together than by correspondence.

I am ready, whenever you are, to proceed to mark jointly with yourself-, by suitable monuments, the Southern Boundary of Maryland, between the Pocomoke River and the Sea, that is the present acknowledged boundary between Worcester, Md., and Accomac, Va.

I direct this, as you request to Hannibal, Missouri, and would be happy to receive an acknowledgment of its receipt.

Very truly and respectfully yours,

(Signed) THOS. J. LEE.

HANNIBAL, *May* 1, 1860.

Col. Thos. J. Lee, Comm'r for Maryland.

DEAR SIR: Your favor of the 20th ult., reached me here, on the same day I did, having been seven days on my journey. I delayed 'till now that I might answer with some confidence as to the time I could meet you in Washington.

I have learned already that it will be out of my power to get back as early as the 7th inst., and cannot now name a day at which I could promise to meet you, and can only say that I hope to be in Richmond on my way home by the 20th inst. From there I will write

you, to say when I can meet you at the Winder's Building in Washington.

Yours respectfully,
(Signed) A. W. McDONALD,
Comm'r, etc.

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ELLANGOWAN P. O.,
BALTO. CO., MARYLAND, *May* 8, 1860.

Angus W. McDonald, Commissioner, etc.

DEAR SIR: In compliance with the appointment made in your letter of 17th April, and my reply thereto, I repaired to Washington City, and remained there the 5th, 6th and 7th of May. Not being successful in finding you there, I returned to my home last evening.

Any communication you may be pleased to favor me with, will reach me if addressed to this place.

In the short reply I forwarded to your letter of the 17th April, I did not refer to some remarks therein contained; but as the meeting I desired did not take place, you must permit me now to answer them.

You express the hope that the Act lately passed by the Legislature of Maryland "may prove no obstacle in the way of an early "adjustment of the questions referred by both States to the joint "commission to act and report upon;" and in another part of your letter you advise me of an appropriation by Virginia for "erecting suitable monuments along the line from the Bay to the sea, "as re-"ported and mapped."

It is with much regret that I find, at this late day, that we entertain such different views as to the nature of our duties. I was not aware that the object of this Commission was the discussion of questions of Boundary between the two States.

We were simply directed *to retrace and mark* certain boundary lines named in the Acts of our respective Legislatures, under which we were appointed, and to report *"all the facts"* touching the *"locating and marking said lines"* when the work was done.

We have not reported upon any of these lines because the work is not done. You took certain unfinished drawings of preliminary surveys to Richmond, for the inspection of your Legislature,
697 and I did the same, to Annapolis for the same purpose. *There* were not authenticated by any signatures, titles or explanations. Our joint report of Dec. 21, 1859, was simply one of progress, and it was to shew this that I understood these drawings were to be taken from the office by each of us. I am therefore at a loss to understand your allusion to "the line reported upon between the Bay and the sea."

The Acts of both Maryland and Virginia establishing this present Commission refer to the Southern Boundary of Maryland as the line "between Smith's Point and the Atlantic;" this was so indefinite, that the last General Assembly of Maryland, having the subject of an appropriation before them, deemed it advisable to insert an ex-

planatory clause in an Act for the prosecution of the work we are engaged upon.

There were no uncertainties in this line; on the contrary, Maryland has always held up to the limits established in conformity with the agreement of the Commissioners of 1668, and has had uninterrupted possession up to those limits.

From 1669 to 1680, when this agreement, and the controversies which gave rise to it, were fresh in the minds of the two Colonial Governments, and of the people, grants were made and patents issued by the Lord Proprietor for lands lying along the north shore of Pocomoke Bay, in what is now known as Little Annemessix, and south of the prolongation westwardly of the present line between Worcester and Accomac. These have remained undisputed to this day, and the descendents of some of the original grantees are still living in Maryland upon these very tracts.

This Commission of 1668 defined and declared Watkins' Point to be that whole promontory, or body of land lying between Pocomoke Bay and Annemessix Bay; and being qualified to fix the bounds of Virginia and Maryland, established and marked the *whole boundary* across the "Peninsula or cher-onese" by a line between Pocomoke River and the marsh of the sea side, beginning therefore on Pocomoke River on "the land of Robert Holsters" at a point East by Compass without allowance for the variation of the needle as it then existed from "the extremest part of the westernmost angle"
698 of said Watkins' Point as by them defined. The Line they thus established being the present acknowledged divisional line between Worcester County, Maryland, and Accomac County, Virginia. This is the line which (as I find there is an appropriation by Virginia, which may be deemed applicable to this purpose) I proposed in my letter of April 20th to mark, jointly with yourself, whenever you are ready to do so, and I make this explanation that there may be no misunderstanding of the meaning of the 1st Section of the Act passed at the last session of the Legislature of Maryland.

The line across the Bay has never been defined. The first and only mention I can find of it, is in the compact of 1785, between Maryland and Virginia, where it is alluded to as doubtful, and I am not aware of any action taken since to establish it.

Watkins' Point being acknowledged to be as above described, the line across the Bay, as defined in that same section of the Act of Maryland, is a just and proper consequence to that description, and is, as required by our charter the "shortest line" across the Bay.

In the Act of 1852, in relation to retracing and marking her *Western Line*, Maryland yielded, as she has unfortunately too often done, the point at issue between the Commissioners of 1818. It was an advance towards an amicable settlement, fully met, although not very promptly, by the Act of Virginia of March, 1858, which consents to, and directs, the marking of the Meridian Line from Fairfax Stone, to the Southern Boundary of Pennsylvania, from the Western Boundary of Maryland.

The second section of the Act lately passed by the Legislature

of Maryland, simply declares this Line, the Meridian Line from the Fairfax Stone surveyed by us in obedience to these Acts of our two States, to be the Boundary of Maryland. The next step in course in the proceedings.

As there was no longer a *question of boundary* between the two States, there was no necessity for one General Assembly to wait to be informed of the action of the other for the passage of Acts necessary for the continuation of our labors. This would have
699 caused needless delay in bringing the duties of our commission to a close.

I have thus endeavored to explain the "declaratory legislation" of Maryland which seems to have surprised you, and have only the regret that the failure of similar legislation on the part of Virginia will cause delay in the work entrusted to us. Some progress however can be made by marking the line as above proposed.

May I ask for the favor of an acknowledgment of the receipt of this communication.

Very truly and resp'y Yours,
(Signed) THOS. J. LEE.

The receipt of this was never acknowledged.

ELLANGOWAN P. O.,
BALTIMORE COUNTY, *May* 21, 1860.

His Excellency Governor Hicks.

SIR: I have the honor to inform you that on March 6, April 10 and April 12 last, I wrote to Angus W. McDonald, Esq., Commissioner &c., for Virginia, requesting an interview with him for the purpose of making further arrangements for the prosecution of our duties, and as I had been informed that the Legislature of Virginia had appropriated at its last session for marking the Eastern Shore Boundary, I also informed him that I was ready at any time to join him in marking, with suitable monuments, the line between the Pocomoke and the Sea.

On 20th April, Mr. McDonald replied naming a day of meeting. In compliance therewith, I repaired to Washington and remained there from the 5th to the 9th of May. On my return to my home, I received a communication from him, regretting that he could not comply with his engagement, and stating further that he could not at that time name a day when he could promise to meet me.
700 Under the circumstances, believing that I have hitherto made every proper advance towards furthering the State's interest by endeavoring to suit my own to Mr. McDonald's convenience, I deem it due to the State and to myself, that the next proposition for an interview should come from him.

During this time, however, our own part of the labors of the Commission have been continued, with as little delay as possible. The drawings and computations of the last years survey of the Western Line, were resumed on the 15th April, and are now in progress.

A small general map of the whole Eastern Shore Boundary has been prepared for publication, which will be previously submitted

for your approval. This is designed as explanatory of the meaning of the declaratory act of the last session, that it may be placed beyond danger of misconstruction in future.

On the 8th inst., Lieut. Michler, U. S. Topographical Engineers, retired from the charge of the Survey of the joint Commission, previous to which he submitted to me his vouchers for disbursements, made on account of the joint commission, including arrearages and his own compensation from the date of the payment by you, April 1, to the day of his retiring from the service of the State, 8th May; Maryland's proportion of all which being found correct and just, I paid, and in doing so expended all the public funds in my hands. These vouchers I will retain in my possession unless otherwise directed, until the end of the present quarter, when they will be submitted with my own vouchers for present and future expenditures.

On Lieut. Michler's departure, I took charge of the drawings, note books, and other property belonging to the State of Maryland, and gave the necessary instructions to the draughtsmen employed, to continue the work under my immediate superintendance.

I propose to continue, without any delay, the work in the field and in the office necessary to complete the "Survey and record" of our Boundary Lines in obedience to the 3rd Section of Act of 1860, chap: 385. For which purpose, I shall require for the payment of current expenses, a monthly sum of seven hundred dollars,
701 beginning with this month. The first remittance I would be glad to have at an early day, as I desire to send a surveying party to the Western Line, on or before the 1st June, preparatory to following with a second party, a few weeks later.

I have the honor to remain,

Very respectfully,

(Signed) THOS. J. LEE,
Commissioner, &c.

ELLANGOWAN P. O., BALTO. CO., *June* 30, 1860.

His Excellency, Governor Hicks.

SIR: Since my last report of May 21, I have received no further communication from the Commissioner for Virginia. I find from the newspapers that he has sailed for Europe, and from what I have heard he has been commissioned by resolution of the General Assembly of Virginia to proceed to England to procure all documentary and other evidence to "establish the true lines of Boundary between "Virginia and the States of North Carolina, Tennessee and Mary-"land."

Previous to his departure he was at the office in Washington, where my assistants are employed, and gave directions to one of them for the safe keeping of the duplicate preliminary maps belonging to his State, but I have been unsuccessful in my endeavors to have an interview with him.

I am not disposed at present to notice this want of courtesy on the part of the Commissioner, further than to make an official record of it.

But there is another matter which, as it has not been in my power to bring to his notice, I must take this occasion to set before you.

In the report of a speech of Mr. Watson of Accomac, in the Legislature of Virginia, in reference to this Boundary Commission, published in the Richmond Enquirer of Feb'y 22, 1860, I find
702 the following concluding remarks: "The line running East from the Pocomoke River makes no change, but leaves the "inhabitants along that line to pay taxes and to vote where they "have been in the habit of paying taxes and voting; but west of the "Pocomoke River, the line, as run by the Commissioners, shows "that a considerable number of taxpayers and voters have been, for "many years paying taxes in Maryland, and voting in that State."

"The report of the Commissioners also shows that we are entitled "to some thirty square miles of territory. It is for the purpose of "having that report ratified by the Legislatures of Maryland and "Virginia, that I offer this resolution, and move its reference to a "special committee."

To this quiet way of making me relinquish 30 square miles of the territory of Maryland, I paid but little attention at the time, being disposed to attribute it to the Hon. member's ignorance of his subject; but in a note received from Mr. McDonald, dated April 20th, there is this paragraph, "Virginia passed no Act that I am aware of, on "the subject (of boundary) except by resolution to direct that as "much of the sum of one thousand dollars as might be requisite to "pay her portion of the expenses of erecting suitable monuments "along the line from the Bay to the Sea, as reported and mapped, "should be used for that purpose."

By whom was this reported and mapped? Has the Commissioner for Virginia endorsed Mr. Watkins' remarks? The only report made was our joint report of Dec'r 21, 1859, to our two Legislatures, shewing our progress and our instructions to Lieut. Michler of Oct. 2, 1858, copies of which accompanied this report, are most explicit in designating these Surveys on the Eastern Shore, as entirely preliminary and for the purpose of obtaining the best local information to enable us to locate the line when ready to do so.

We were appointed to "retrace and mark" certain lines named in the Act of our two Legislatures and to report "all the facts touching the locating and marking said lines," when the work was done. We have not reported upon any of these lines, because the work has not been done.

All my reports to you, Sir, have been simply reports of
703 progress, and such also was our joint report to the Legislature.

Mr. McDonald took certain unfinished drawings of these preliminary surveys to Richmond, for the inspection of his Legislature, and I did the same to Annapolis, for the same purpose. These were not authenticated by any titles, signatures or explanations; but it was our understanding, were to be exhibited merely to shew the progress of the work.

The line run by Lieut. Michler *west* of the Pocomoke was not intended by him, or us, to be a line of Boundary, nor have we reported upon any line of boundary on the Eastern Shore. This your Excellency is perfectly aware of. The declaratory Act of the last Ses-

sion, defines these lines most explicitly, and puts an end to all discussion of questions of boundary, as far as I am concerned; but it is for the purpose of recording my protest against this construction of the object of the Lines run by Lieut. Michler, in obedience to our joint instructions, and laid down upon his maps, that I trouble you with these remarks.

At the beginning of this month, I despatched a surveying party, under Mr. Daser, who was similarly employed last summer under Lieut. Michler, to the Meridian Line from the Fairfax Stone; to continue the tracing of the line between the points determined astronomically by Lieut. Michler, and to correct such errors as the computations made this spring have brought to light. He is directed to mark the line at every prominent point, and on an average about every half mile with stakes about 5 feet above ground, squaring at least 4 inches. Mr. Daser organized his party and commenced his work on the 6th of June, and is now, from his last report to me, about Snaggy Mountain.

During the month of July, another party will be placed in charge of Mr. de la Camp, the principal assistant. As soon as this party is organized, and at work I will repair to the line to inspect their progress.

I herewith enclose my accounts for disbursements, up to 30th June, inclusive, shewing a balance in my favor of $131.83, and have to request a further remittance of $700 to meet current expenses.

I have the honor to be, &c.,

(Signed) THOS. J. LEE,
Commissioner.

704 OAKLAND, ALLEGHANY CO., *August* 4, 1860.

His Excellency Governor Hicks.

SIR: I have the honor to report the progress made in the survey of the Western Boundary line since my last report of June 30.

During the month of July, the party engaged in running and marking the line between the points established astronomically last year by Lieut. Michler completed the whole line to the monument on Mason & Dixon's line, and the party was discharged at the end of the month.

There only remained about two weeks work of the Second party engaged upon topography in the vicinity of the line, when the whole of the field work will be completed.

I cannot too highly praise the energy and industry of Messrs. de la Camp and Dazer, in thus bringing their work to a speedy close. I shall not, in consequence, require a further remittance of funds until the end of the present month.

I have the honor to be

With great respect,

(Signed) THOS. J. LEE,
Commissioner, &c.

LAND OFFICE OF MARYLAND, *To wit:*

I hereby certify, that the aforegoing is a full and true copy of the contents of a book in manuscript, labeled "Joint Commission with Virginia, For marking the Boundary Lines of the State, under Acts of Assembly of March & May, 1852, and March 1860. Correspondence," now on file in the Land Office of Maryland.

In testimony whereof, I have hereunto set my hand,
[SEAL.] and affixed the seal of the Land Office of Maryland, this first day of December, in the year eighteen hundred and
705 ninety-two.

PHILIP D. LAIRD,
Commissioner of the Land Office of Maryland.

STATE OF MARYLAND,
Anne Arundel County, set:

I, Charles B. Roberts, Chief Judge of the Fifth Judicial Circuit of the State of Maryland, do herby certify, that the aforegoing attestation by Philip D. Laird, Commissioner of the Land Office of the State of Maryland, is in due form.

Given under my hand this Sixth day of December, eighteen hundred and ninety-two.

CHARLES B. ROBERTS,
Chief Judge, Fifth Judicial Circuit of the State of Maryland.

STATE OF MARYLAND,
Anne Arundel County, set:

I, Sprigg Harwood, Clerk of the Circuit Court for Anne Arundel County, do hereby certify, that Charles B. Roberts, Esquire, who signed the aforegoing Certificate of Attestation, was, at the time of so doing, ever since hath been, and still is, Chief Judge of the Fifth Judicial District of the State of Maryland, duly commissioned and qualified; and that to all his acts as such due faith and credit is and ought to be given, as well in Courts of Justice as thereout.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Circuit Court for Anne Arundel County,
[SEAL.] this Seventh day of December, eighteen hundred and ninety-two.

SPRIGG HARWOOD,
Clerk of the Circuit Court for Anne Arundel County.

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THE STATE OF MARYLAND,
EXECUTIVE DEPARTMENT.

I, Frank Brown, Governor of Maryland and custodian of the Great Seal thereof, do hereby certify that Philip D. Laird, Esquire, was duly appointed and commissioned and has properly qualified as Commissioner of the Land Office and Keeper of the Chancery records of the State of Maryland; that the said office was established by

the Constitution of the State and that his term of office will not Expire until May 1896. —I further certify that his annexed certificate is in due form and that full faith and credit are due and ought to be given to his official acts.

And I further certify that I verily believe that each of the signatures and seals attesting the said — are genuine.

Witness my hand and the Great Seal of Maryland.

Done at the City of Annapolis on the seventh day of
[SEAL.] December, in the year of our Lord eighteen hundred and ninety.

FRANK BROWN.

By the Governor:

E. W. LE COMPTE,
Secretary of State.

707 (Defendant's Exhibit L. is a large map not reproduced by direction of counsel.)

708 DEFENDANT'S EXHIBIT M.

MARYLAND
vs.
WEST VIRGINIA.

Final Report of the Virginia Commissioners, on the Maryland and Virginia Boundary, to the Governor of Virginia.

Richmond. R. F. Walker, Supt. Public Printing, 1874.

Supreme Court U. S. No. 1, Original Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

709 *Final Report of the Virginia Commissioners, on the Maryland and Virginia Boundary, to the Governor of Virginia.*

Richmond. R. F. Walker, Supt. Public Printing, 1874.

710 COMMONWEALTH OF VIRGINIA,
EXECUTIVE OFFICE, *January 26th,* 1874.

To the Senate and House of Delegates:

I have the honor to transmit herewith the able and exhaustive final report of the commissioners on behalf of this state, upon the boundaries between Maryland and Virginia, together with the accompanying papers, and to commend to your careful consideration the important interests to which they refer.

JAMES L. KEMPER.

711 *Report.*

RICHMOND VIRGINIA, *January 15th*, 1874.

The undersigned, commissioners on the part of Virginia, submit their final report upon the boundaries between the states of Maryland and Virginia. They now condense the propositions which they have maintained, referring to their "statement" heretofore made for the authorities, and proofs and arguments which support them, set forth the tenders of compromise which they have made, and the disagreement with the commissioners on the part of Maryland, which has resulted from their acceptance of no compromise, and their extreme claim of limits, which could not be acceded to by commissioners on the part of Virginia.

Proposition I.

By the charter of James I. dated April 10th, 1606, all the territory claimed by Great Britain in North America, then called Virginia, lying between 34° and 45° N. L., was granted to two companies, the London and Plymouth companies. The former was authorized to plant a colony between 34° and 41° N. L.; and the latter was authorized to plant one between 38° and 45° N. L.; *but the last planted should not be within one hundred miles of the other first established.* The London company made its first settlement the 13th day of May, A. D. 1607; and, before the Plymouth company made any settlement or planted a colony, the second charter was granted in May, 1609. This last charter granted to the London company two hundred miles north and two hundred miles south, from Point or Cape Comfort, and from the Atlantic Ocean east to the Pacific ocean west. This belt of territory was from ocean to ocean in length and 400 miles wide, from 34° to 40° N. Latitude. Thus, under the first grant, the territories of the two companies over-lapped each other from 38° to 41° N. L.; *three degrees and a space between their plantations was left unsettled except by the Indians.* And this state of the grants left an opening for the grant afterwards to Lord Baltimore, who could not, being a Catholic, take the oath of supremacy and allegiance in the colony of the London company, after-
712 wards specially called Virginia. And the two parallels of N. latitude, 38° and 40°, being thus cardinal lines between the London and Plymouth companies, this formed the reason why this comparatively vacant territory, as far north as 40° N. L., and as far south as Watkins point, under the parallel of 38° N. L. was chosen for the limits of the grant to Lord Baltimore. The bend of the Potomac river, being a little south of the parallel of 40° N. L., was made a natural boundary on the western shore of the Chesapeake bay, and Watkins point, under 38° N. L., was made the southern boundary of Maryland on the eastern shore of that bay.

There was a third charter granted to the London company, the only part of which material to the question of boundary is that which prohibited Papists from settling in the limits of the colony in

Virginia, which prohibition was enforced by a series of colonial statutes.

II.

The charters of the London company were cancelled by a judgment of the Court of King's Bench, pronounced in a case of *quo warranto* depending in that court at its Trinity term, in the year 1624. That judgment affected the rights of the *company* only, but *not* the rights of the *colony*. The same powers of government which the charters had vested in the company, *were revested in the Crown;* and the same title to the land within its chartered limits, which the charters had vested in the company, was revested in the Crown. At this juncture of the time, 1624, when the charters of the company were revoked, James I. died; and he was succeeded by Charles I., who was at heart a Papist, and the particular friend of Lord George Baltimore. The latter, dissatisfied with his colony at New Foundland petitioned the king for a grant in Virginia. In 1629, he visited Jamestown, in person. The oaths of supremacy and allegiance were tendered to him, he declined to take them, and he was thus driven to take a grant of territory *lying in the unsettled portions of the country common to Virginia and New England, north of* 38° *N. L., and between that parallel and* 40° *N. L.* This history is important because it shows *the reason why the grant to him was located so as to be not north of* 40° *and not south of* 38° *N. L.*

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III.

George Lord Baltimore, petitioned for his patent in 1629, but before it was completed he died, and in 1632/3, the first grant of Maryland was made by Charles I. to Cecelius Calvert, Baron of Baltimore, in Ireland, &c.

The undersigned have sought from every source in their reach, the best copies of the Charters in Latin, and the best translation thereof, and now present all of it which relates to boundary, to wit: (the Latin and English alternating.

"Totam illam partem peninsulae
All that part of the peninsula
"Live chersonese, jacentis in partibus
or chersonese, lying in the parts
"Americae, inter oceanum ex oriente et
of America, between the ocean on the east and
"Sinum de Chesapeake ab occidente
the bay of Chesapeake on the west,
"A residus ejusdem per rectum lineam,
divided from the residue thereof by a right line,
"a promontoris live capite terra, vocate
drawn from the promontory or head-land, called
"Watkins point, juxta vinum pradictum.
Watkins point, situate adjoining the said bay,
"prope fluvium de Wigheo, situate ab occidente,
near the river of Wigheo, from the west

"usque ad magnum oceanum in plaga orientali,
as far as the main ocean on the Eastern shore,
"ductam divisam, et inter metam illam,
and between that bound on the south
714 "a meridie usque ad partem illam oetuarii,
unto that part of the estuary of Delaware
"de Delaware ab aquilone quae
on the north, which lies under the
"subjacet quadragesimo gradui latitudinis
fortieth degree of north latitude from
"Septentrionalis ab aequinoctiali, ubi
the equinoctial, where New England is
"terminatur Nova Anglia; totum que
terminated; and all that tract of land
"illius terrae tractum infra metas subscriptas,
within the bounds underwritten, to wit:
"videlicet, transeundo a dicto aestuario
Passing from the said estuary, called Delaware
"vocato Delaware recta linea, per gradum
bay, in a right line, along the degree aforesaid,
"praedictum esque ad verum meridianum
unto the true meridian of the first fountain
"primi fentis fluminis de Pottowmack,
of the river Potomac, thence turning
"diende vergendo versus meridiem ad
towards the south to the further bank of
"ulteriorem dicti fluminis ripam, et eam
said river, and following the same on that
"sequendo eam qua plaga occidentalis ad meridion-
side where the western shore looks
"alem spectat, usque ad locum
towards the southern "(shore)" unto a
"quendam appellatum Cinquack, prope
certain place called Cinquack, situate
"ejusdem fluminis ostrum situatum
near the mouth of the same river
715 "ubi in praefatum sinum de Chesapeake
where it disembogues into the aforesaid bay
"evolitur; ac inde per lineam brevissimam
of Chesapeake; and thence by the shortest line
"usque ad praedictum promontorium live
to the aforesaid promontory or place
"locum vocatum Watkins' point: ita quod
called Watkins' point; so that the whole
"totus terrae tractus per lineam praedictum
tract of land divided by the line aforesaid,
"inter magnum oceanum et Watkins' point,
between the main ocean and Watkins' point,
"divisus usque ad promontorium vocatum
unto the promontory called Cape
"Cape Charles, et singula sua appendentia,

Charles, and all and singular their appurtenances,
"nobis haeridibus et successionbus nostris
may remain excepted forever to us,
"intaegre remaneant excepta imperpetuum
our heirs and successors."

The original charter, when closely scanned, must be held as never having granted to Lord Baltimore the bed or isles, or south or right bank of the river Potomac.

The *initial* point of boundary between the two colonies, was *Watkins' point,* on the Eastern shore of the Chesapeake bay.

That two such colonies should have had no beginning and no terminating point for boundaries, is not more absurd than the pretension now set up by the commissioners on the part of Maryland, that the point of beginning and terminating the lines between the two colonies *was never ascertained.* As will be shown hereafter, the point was identified and acknowledged by agreement of the two colonies, and the very *angle* of it fixed, whence to run the line on the Eastern shore, and the line was run and marked in 1668,

716 *from that angle of Watkins' point, over the Pocomoke river, (two natural marks), by a right line to* Swanscagut creek, (another natural mark,) on the sea side of the Peninsula, and thence continued a right line to the main ocean.

No other line but that on the Eastern shore was run by the commissioners who acted in 1668. The line was run between Maryland and Pennsylvania afterwards. William Penn deprived Lord Baltimore of some 16 miles of territory in width, south of 40° N. L., leaving the western boundary of Maryland with Virginia to be settled. And that western boundary of Maryland with Virginia, is referred to now to aid in deciding the question: *on which bank of the Potomac did the line between Maryland and Virginia begin and run on the western shore of the Chesapeake bay?* This question can be determined only by comparing the original charter with a diagram of the river Potomac.

Michler states in his report upon the meridian of the first fountain of the Potomac, that after beginning at the first fountain of the Potomac and running *north some two miles and a half, he came to the river Potomac, there running a N. west course.*

This at once shows that this river starts north of east from its fountain and turns N. west to cross the meridian of its fountain, and thence turns south of west again to get its general course, first east, then N. east to Hancock; thence S. east to its mouth; and the map shows *that* the north headland at its mouth. *Point Lookout is a peninsula with its eastern shore on the Chesapeake bay, and its western shore* on the river; that Point Lookout lies N. west from Smith's point, the south headland at the mouth of the river Potomac; that Cinquack was located at or near Smith's point, and that the *western shore of the Potomac*, at Point Lookout, *is the only place where the shore of the Potomac looks toward a place then called Cinquack.* With this held in the mind we can rationally comprehend the dispute and its exact points of difference.

1st. Maryland claims that by the charter of Lord Baltimore, the

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standpoint of the grantor was on the 40th parallel of N. L. That is granted.

2nd. She next claims that the line turning south "to the
717 *further bank* of said river" *necessarily ran to the south or right bank of the Potomac.* Virginia, on her part, claims that this could not be so from the course of the river, for by the survey of Michler, the left or *north* bank was the "*further* bank of the river," *at the point where it was cut by the meridian of the first fountain thereof, traced from the parallel of 40° N. L.*

Maryland to this replies that whatever be the map of the river at its source, the *line was to be run to a place called Cinquack, and the river was not to be crossed by it, but the line was to continue on the same bank of its beginning to that place;* and that place was at or near the mouth of the Great Wicomico, near the mouth of the Potomac; or, by an old map now in possession of the historical society of Maryland, was located at or near Smith's point. To this Virginia replies that the charter *does not* require *that the line,* on whichever bank of the river it was to run, should run *to Cinquack;* but that it required that the line should "follow the same (*further* bank of the river on which it was to begin.)" On "that side where the western shore *looks towards the southern shore unto a certain place called Cinquack,* situate *near the mouth of the same* (Potomac) *river, near where it disembogues into the aforesaid bay* (Chesapeake)." This called for a line *to a place on the northern or left* bank of the river which *looked* (specktat) towards Cinquack on the south, not to *Cinquack* but to a place where the western shore looked to "the southern shore unto Cinquack." *And "Point Lookout" is the place and only place answering this description of the grant."* And the Cinquack located by Smith's map could *not be the Cinquack meant because it is not at or near the mouth of the Potomac where that river disembogues into the Chesapeake bay."* Smith's point is more likely meant as the part of the territory called Cinquack, the *dominion* of a chief whose *wigwam* only was located by Smith where the Big Wicomico disembogues into the bay, ten miles, at least, south of the Potomac river.

Thus, it is contended, that by the original charter to Lord Baltimore, he was granted only *to the north* bank of the Potomac river.

But Virginia founds her claim upon much higher grounds
718 than that of critical construction of the first charter to Lord Baltimore.

IV.

Whatever were the boundaries originally fixed by the grant to Lord Baltimore, the grant itself was immediately contested by the colony of Virginia, and its legality was never decided by the courts to whom the question was referred, to this day. But it was revoked by the revolution in Great Britain of 1649. On the 12th of March, 1651, a convention was entered into between the commissioners of the Parliament of England, and the governor, council and Burgesses of Virginia, which surrendered the colony to the commonwealth, and annihilated the royal government and prerogative in Virginia. By

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the articles *"at the surrender of the countree,"* it was solemnly agreed and concluded.

4th. That Virginia shall have and "enjoy the anchient bounds and lymitts granted by the charters of the former kings, and that we shall seek a new charter from the parliament to that purpose against any that have intrencht upon the rights thereof."

Thus, the royal grant to Lord Baltimore was annulled by "convention and treaty," made by the sovereignty of Great Britain, then governing in fact and of right; and by the same highest authority, the *"ancient bounds and limits granted* by the *charters of the former kings" were restored to Virginia.* This was by treaty made by and with a sovereignty *defacto et dejure.*

V.

But the limits and bounds of Virginia were not only restored by the commonwealth of England, but all of her territory lying between the Potomac and Rappahannock rivers, called the Northern Neck, including the river Potomac and all its isles, was regranted to her by Charles II, then at St. Germains, through a grant to Henry, Lord Germains, Earl of St. Albans, and Ralph, Lord Hopton, first in 1651, and afterwards recited and confirmed, by a grant dated 8th May, 1667, as shown by the "Public Record Office of England,
719 Chancery Patent Roll 21, Charles II." These patents embraced all the territory bounded by and within the head of the rivers of "Tappahannock, alias Rappahannock, and Quinough or Pattowmack rivers, the courses of the said rivers, as they are commonly known, &c., *together with the rivers themselves,* and *all the islands within the banks of said rivers, and all the woods,* &c., &c., with sundry provisions.

That this grant was not to infringe or make void or prejudice any contracts or grants, &c., theretofore made by the governor or governors and council of *Virginia,* &c., made before the 29th day of Sept'r, in the 13th year of the reign of Charles II. And these grants were prohibited from acting or intermeddling in the military affairs or forces, in the territory, *or* with the government or command of any castles or forts thereof, *without the order, authority and command of the governor and council of Virginia* for the time being, *but the same shall remain, continue and be in the governor and council of Virginia;* and that the governor and council and assembly of Virginia, for the time being, shall have full power and authority to lay any tax and impositions in and upon the said territories hereby granted.

Thus granting, with the reservations named, the full *proprietary rights to the individual proprietors or grantors,* and to the *governor, council and assembly of the colony of Virginia, full military and civil power of government over the Northern Neck and river Potomac.* And on the petition of Francis Morryson and others, agents for the governor, council and Burgesses, *"of the country of Virginia, and territory of Accomac,"* and on the report of the king's council, at Whitehall, confirmed by the king, present in council, on the 19th November, A. D. 1675, the governor, council and common-lty of Vir-

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ginia were authorized *to purchase the lands contained in the grant to the Earl of St. Albans.* And thus the colony of Virginia *became seized of the entire territory of the Northern Neck, and of the entire river Potomac and its waters and isles in the whole course thereof, independent of the charter to Lord Baltimore.*

720

VI.

Carefully examined, the river Potomac named in the grant to Lord Baltimore, was the *Quinough;* and the river of that name never embraced the north and south branches of the Potomac, as it is now known. Those branches were respectively called by distinct names from the Quinough; the north branch was called the Cohongaroota, and the south branch was the Wapopocomo, and the Quinough extended only to the falls of what is now known as the Potomac. But the boundary mark was fixed by Lord Fairfax, at the first fountain of the north branch or Cohongaroota, as found by Michler, and the stone there now is the recognized point of beginning on the Potomac river.

VII.

Lord Baltimore was restored to his proprietary right in Maryland by Charles II, subject to the grant made to Lord Hopton. The latter grant was never disturbed or questioned by Lord Baltimore, by any proceedings before the courts of law or at the Court of St. James. He yielded the whole Northern Neck to Lord Fairfax, and how and when and by what authority or act did he ever regain the Potomac river? Both alike, the land and river, were granted, and the two were alike retained within the jurisdiction of Virginia.

VIII.

But there was a controversy about the boundary between the two colonies on the Eastern Shore, the history of which is remarkably well preserved, which threatened a civil war about the territory bordering on the Manokin and Big Annamessex rivers, and the Nanticoke sound, and the bay into which the Wicomico river, on the Eastern Shore, empties. This caused the "Grand Assembly, held at James City, Sept'r 10th, 1663, the 15th year of Charles II, to pass act 2nd, an act concerning the bounds of this colony on the Eastern Shore."

It commanded all his majesty's inhabitants of the Eastern Shore of Virginia, from Watkins' point southward, to render obedience to his majesty's government of Virginia, and make payment of his majesty's rents and all publick dues to his majesty's colony of Virginia. It truly claimed Watkins' point to be the Lord Balti-
721 more's southernmost bounds on the Eastern Shore; declared that "five able selected surveyors and two Burgesses" had made due examination thereof, and the grand assembly had concluded "the same place of Watkins' point to be the north side of Wicocommico river on the Eastern Shore, and near unto and on the southside of the straight limbo, opposite to Patuxent river." And Edmund Scarborough, John Catlett and Richard Lawrence, or any

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two of them, whereof the surveyor-general (Edmund Scarborough) was to be one, to give notice at Manoakin, or any other convenient place, and give a meeting to the Lord Baltimore's lieutenants or deputies, &c., &c., and to report to his majesty's governor and council of Virginia. Edmund Scarborough made his report in 1663, that he had taken "fourty horse for pomp of safety" with him, and took formal possession of the country as far north as Manoakin.

This brought him into collision with the authorities of Maryland, and caused the Governor of Maryland to invoke the co-operation of the Governor of Virginia; and the result was, that the two colonies, respectively, appointed commissioners, one each, to adjust and settle the whole controversy in respect to boundary on the Eastern shore, and in respect to any conflict of land titles growing out of disputed limits of the two colonies.

Philip Calvert, the nephew of Lord Baltimore, and the Chancellor of Maryland, was appointed on the part of Maryland, and Edmund Scarborough, Surveyor-General of Virginia, was appointed on the part of Virginia. Their acts were to be final, and they were instructed "*to meet upon the place called Watkins' point,* and thence to run a *divisional line to the ocean, sea, &c.*" This instruction they obeyed, and on the 25th day of June, 1668, they made the report of their agreement, under their hands and seals.

This history and their report is found fully preserved in the archives of Maryland, in Council Books, from 1656 to 1658, and from 1669 to 1673, now in the keeping of the Historical Society of Maryland, Baltimore; and their report is as follows:

722 "Articles of agreement between Philip Calvert Esq., Chancellor of Maryland, deputed by the governor of said province to treat and *conclude* upon the bounds of the said province, and Col. Edmond Scarborough, His Majesty's Surveyor-general of Virginia, authorized and commanded to lay out the bounds of Virginia.

I. *Imprimis.* It is agreed that all persons who have surveyed or patented and seated land on the seaboard side, in the right of Virginia, and now fallen within the divisional line, shall enjoy their said lands, they taking a patent from the lord proprietary of Maryland, and within seven years entering rights in the said province, and paying the half fees to the surveyor-general, and full fees to the secretary and chancellor.

II. Item. All such as have already patented any lands in right of Virginia, in any other place within the line aforesaid, which is not also patented in Maryland, shall have the privilege in the foregoing articles, upon such terms as in the said article expressed.

III. Item. All such who have patented and seated lands in right of Virginia, which do fall within the line aforesaid, and are patented likewise in Maryland, but not seated in the same right, shall enjoy the same, unless it can be proved they have seated said lands in defiance and despite of the said government, after warning given, provided they take patents, enter rights and pay fees, as in the first article is agreed.

IV. Item. If any lands shall chance to be patented, only in right of Virginia, for which there is also a patent in Maryland, the patent

in Maryland shall carry the land. In witness whereof, the said Philip Calvert and Edmond Scarborough, have hereunto set their —

(Signed) PHILIP CALVERT.
EDMOND SCARBOROUGH."

723 And in the same record, dated the same day, is found the following:

"Whereas, his royal majestie's commission to the surveyor-general of Virginia, commands, setting out the bounds of Virginia with reference to his majestie's hon'ble governor and council of Virginia, from time to time, to give advice and order for directing the said surveyor-general to do his duty appertaining to his office. In order th-reunto his majesty's hon'ble governor and council have, by letter, moved the hon'ble, the Lord Baltimore's lieut-gen'l of Maryland, to appoint some fitting person to meet upon the place called Watkins' point, with the surveyor-general of Virginia, and thence to run the divisional line to the ocean sea, &c.

"The Hon'ble Philip Calvert, Esq., chancellor of Maryland, being fully empowered by the hon'ble lieut.-general of Maryland, and Edmund Scarborough, his majesty's surveyor-general of Virginia, after a full and perfect view taken of the point of land made by the north side of Pocomoke bay and the southside of Annamessex bay, have and do conclude the same to be Watkins' point, from which said point, so called, we have run an east line agreeable with the extremest part of the westernmost angle of said Watkins' point, over Pocomoke river to the land near Robert Holston's, and there have marked certain trees, which are so continued by an east line running over Swanseagut creek into the marsh of the sea-side, with apparent marks and boundaries, which, by our mutual agreement, according to the qualifications aforesaid, are to be named as the bounds of Virginia and Maryland, on the Eastern Shore of Chesapeake bay.

"In confirmation of which concurrence, we have set our hands and seals this 25th day of June, 1668.

"(Signed) "PHILIP CALVERT. [SEAL.]
"EDMUND SCARBOROUGH. [SEAL.]"

724 This settlement and adjustment was final and complete in itself.

It was so not only in itself by its power and appointment, but, as will be hereafter shown, it was confirmed, approved, adopted and adhered to by Lord Baltimore; it was mapped in 1695, as the true line actually run, as shown by a map in the historical society of Maryland, in Baltimore; it was confirmed, recognized and adopted by Maryland in laying off the county limits of Worcester county, Maryland, in the year 1742; has been the only line on the Eastern Shore ever since 1668; and is recognized by the historians of Maryland, especially by Kilty and McMahon and Bozman, as the settled line on the Eastern Shore between the two states. It is a settlement of the line, on the Eastern Shore only, and refers only to that line, except in two particulars, to-wit: *it fixes the initial point for the whole line to begin at, and fixes the point for the whole line to ter-*

minate at; the *"extremest part of the westernmost angle of Watkins' point."*

And that angle, then determined, *is still the westernmost angle of Watkins' point, and Watkins' point is still defined, as it was then;* and whatever is uncertain now as to any part of the line then run, can easily be made certain by the parts which are now certain, for the line was *"a right line" by the charter, or an east line, by the agreement,* and more than sixteen miles of it are still marked. It varies from an east line from its beginning by 5° 15 only; and that is accounted for by the variation of the compass then, which is not enough to disturb a long established and adopted boundary; and conformity to the *charter* is the essence of the act of the commissioners, which cannot be affected by so slight a variation from their real agreement. There is nothing else in fact or form which impairs, in the least, this adjustment, and it stands confirmed, for the period of over two centuries. The north headland of Little Annamessex, on Janes' island, is still the westernmost angle of Watkins' point, notwithstanding all the washings of the coast, is midway between the southern shore of Big Annamessex, and the northern shore of Pocomoke sound, on the east coast of Tangier sound; all the marks, numbering over two hundred, still remaining, point to it in the same line; it was easily found and run to by De La Camp, in his survey, and can be identified at all times with mathematical or topographical certainty.

IX.

The king was informed of the settlement of the initial point, and of the line on the Eastern shore, and ordered Lord Baltimore, by his letter to him of 19th of August, 1682, to proceed to ascertain the boundaries of Maryland and Pennsylvania, *"by an admeasurement of the two degrees north from Watkins' point, the express south bounds in your patent, and already settled by commissioners between Virginia and Maryland."* This was again repeated in the letter, and the computation was directed "of sixty English miles to a degree."

Lord Baltimore, thus instructed by the king, has left two memoirs of his conferences with Wm. Penn. The first was held the 13th Dec'r, 1682. He acknowledges Watkins' point to be his southern boundary on the Eastern Shore. He urged, in fact, and so says, that he could not assent to the proposition of Penn, to begin from a point for his southern boundary south of Watkins' point, *because his southern boundary on the Eastern Shore was already settled by commissioners,* and the first person of six, who certified his statement of the conference with Penn, was Philip Calvert, his commissioner, who settled the very part of Watkins' point as the initial point of his boundary. In fact, he records himself as admitting: *"My southern bounds being Watkins' point was so determined by commissioners from his majesty and others from my father."* He fully claimed, as well as admitted, that the line from Watkins' point was fixed, and that he was bound by it.

Another conference was held between him and Penn at New

Castle, Delaware, Tuesday, the 29th day of May, 1683. He still more urgently insisted that his southern bounds had been fixed by *measurement,* and asked why his northern bounds could *not be measured too.*

X.

On the opinion of Lord Chf. J. Holt, and for reasons assigned by George Tuby, att'y-gen'l, Maryland was seized by the king, and a gov'r therefor was commissioned March 12, 1691. Lord
726 Baltimore was deposed from that date to the period of 1715, when he was restored to his lord lieutenancy by George I. Thus, from 1633 to 1715, for a period of 82 years, his title to Maryland was never quiet. And the question arises, to what was he restored in 1715? Delaware, part of Pennsylvania, and the grant to Lord Hopton were all dismembered from his limits. And he accepted a restoration of his lord lieutenancy, subject to these dismemberments, the last as well as the other two.

XI.

The colony of Maryland, as a colony, also confirmed the line run by Calvert and Scarborough. "Maryland Council Proceedings, Liber H. H., folio 268" show that in 1666 the county of Summerset was laid off on the Eastern Shore. Its limits then described by a line on the south drawn from Watkins' point, being the north point of that bay, into which the river Wigheo (meaning the Pocomoke) empties to the ocean on the east, &c. This, in effect, was a line from what is called now Cedar Straits to the ocean on the east. But this was laid off in the year 1666, *two years before the line run by the commissioners, Calvert and Scarborough, between the two colonies in* ——. The colonial line, of course, changed the *exparte* county line bordering on Virginia. This is proved by Maryland herself. In 1742 her county of Worcester was, by her, carved and laid off out of the limits of the elder county of Summerset; and Worcester county was laid off exactly on the Calvert and Scarborough line east of the Pocomoke river. This county was laid off *after the year* 1668, and, of course, observed the colonial line then run by the commissioners, Calvert and Scarborough. And this accounts for the preservation of marks east of Pocomoke river, whilst they are obliterated west of that river.

This fully confirms the state line And this record of the boundary of counties, is confirmed by the records of the county of Summerset, describing a highway and a hundred in 1666-7.

727 XII.

This is confirmed, too, by patents recognizing the *divisional line* between the two colonies. Patents can be shown for every foot of land on the Eastern Shore, granted by Virginia, from Watts' island to near Nanticoke sound, on the bay, and to Swanseagut on the seaside north, especially embracing the southern end of Smith's island, whereon Maryland granted the north side and Virginia the southside of the same tract of 2,000 acres, called Pittscraft.

And patents were taken from Virginia especially by such citizens of Maryland as Daniel of St. Thomas Jenifer, and Daniel Jenifer and Ann Toft, his wife, and others on the Eastern Shore. These patents date from long before 1668 down to the year 1841, the last being to one of the present commissioners of Maryland. Deeds also confirm these positions on the Eastern Shore; and Ferries confirm the claims of Virginia to the Potomac, besides various separate and concurrent statutes of the two colonies and states touching the regulations of lights and buoys, &c.

XIII.

The boundary between Maryland and Virginia was fixed by Great Britain to be on the north bank of the Potomac by the treaty of Paris, between Great Britain and France, on the 10th February, A. D. 1763.

XIV.

But whatever the boundaries of Virginia were before the revolution of 1776, they were then and afterwards fixed by her state constitution of that date; by her cession of her N. west territory to the U. States, inducing Maryland to join the confederation of states, on the condition of recognizing her boundaries, as then claimed by her. She then claimed the Potomac river, and the boundary laid off on the Eastern Shore; and Maryland accepted her part of the cession made by Virginia. This estops her claim of any other boundaries, well or ill founded *now*.

XV.

Maryland, by her authorities of the county of Summerset,
728 recognized the limits of Virginia, as claimed by her in 1776, as late as the 16th June, 1835. The court of Summerset county, Md., then appointed commissioners "to lay off so much of Smith's island as lies within the body of Summerset county aforesaid, into a separate and additional election district, before the 1st April, 1835. The commission was dated April 8th, 1835, and their report was made and confirmed June 16th, 1835. Their report shows that they started at Drum point, on the east side of the island, ran westwardly to the bay, to Sassafras hammock lying on the bay shore; thence by and with the bay shore to Kidge's straits; thence by and with the sound to Drum point." This line runs nearly through the great thoroughfare of Smith's island, and conforms nearly exactly with a right line from Point Lookout to the headland of L. Annamessex, fixed as the initial point on Watkins' point, as established in 1668, and verified by De La Camp in 1858. And now the commissioners of Maryland claim the whole of Smith's island, well knowing that if any part of Smith's island be admitted to have been in Virginia, the line running either from Point Lookout or Smith's point could never terminate at Cedar straits as the initial of Watkins' point.

XVI.

The circuit court of the eighth judicial circuit of Maryland, held the 3rd day of October, 1854, in effect decided that the territory in Tangier sound now claimed by the commissioners of Maryland, and far north of Cedar straits, was not within the limits of the state of Maryland. This was tried in two actions—one criminal, and the other civil—the one arraigning John Tyler, a citizen of Va., and seizing the schooner Fashion, as forfeiture, for violating the laws of Maryland, to prevent the catching of oysters; and the other a suit *vs.* John Cullen, a J. P. of Maryland, by said Tyler, for the arrest and the seizure. Tyler was found dredging at Filliby's rock, north of the great rock in Tangier sound, far north of Cedar straits and of the south end of Smith's island. He was acquitted on the trial of the prosecution, and in the civil action recovered $1,000 damages against Cullen in the circuit court of Summerset Md. The Hon. I. D. Jones, one of the present com'rs of Maryland defended Cullen, and
729 Mr. Crisfield, after whom the town of Crisfield on Little Annamessex and the Crisfield R. R. there are called, was the attorney for Tyler; and these two gentlemen, thus informed of the true line of the two states, at that locality, were two of the chief founders of the Crisfield R. road, the wharf of which at Crisfield, just touches the Calvert and Scarborough line.

This is referred to, to note the remarkable fact that if the location of the terminus of this R. road *exactly on the Calvert and Scarborough line* as ascertained and run by De La Camp, was an accident, *it was one against the recurrence of which any insurance co. will insure at the least appreciable per cent.* In other words, Maryland, her county authorities, her courts her commissioners, her own records and archives and her leading and best informed citizens, now and formerly of the Eastern Shore, identify and recognize the true boundary on the Eastern Shore between her limits and those of Virginia.

In a word, Virginia is entitled to the river Potomac and its isles to its left bank, by the original grant to Lord Baltimore, by treaty with the commonwealth of England, by the grant to Lord Hopton, by the eviction of Lord Baltimore in the time of Wm. and Mary, by his restricted restoration of grant in 1715, by the treaty of Paris, in 1763, and by the cession of her N. western territory by Virginia in 1787; and she is entitled to the line established by the commissioners, Calvert and Scarborough, in 1668, on the E. Shore.

These propositions were fully sustained by the most ample and sufficient records, histories, depositions and reports, all exhibited in a statement made by com'rs on the part of Virginia to those on the part of Maryland; and they made their statement on the part of Maryland; both of which have heretofore been communicated to the executive and gen'l assembly of Va. and been printed. Having maturely considered both statements and the evidences of titles adduced, the undersigned were constrained to conclude; *that the jurisdiction of Virginia embraces the Potomac river, that the true boundary on the western shore of the Chesapeake bay, between Maryland and Virginia is the left or north bank of the river Potomac;*

that the boundary across the Chesapeake bay, is a right line
730 *from Point Lookout, the north headland of the river Potomac, to the "extremest part of the westernmost angle of Watkins point," which is on Janes island and is the northern headland of Little Annamessex river on the Eastern Shore; and thence by a right line over Pocomoke river and over Swansecgut creek to the Atlantic ocean as agreed upon and fixed by the sealed agreement of Philip Calvert, com'r, on the part of Md., and by Edmund Scarborough, com'r, on the part of Virginia, the 25th day of June, A. D. 1668.*

But, in consideration of the relations of amity always existing between the states of Maryland and Virginia in all their past history, and to prevent discord for the future between them and their citizens in respect to riparian rights and the fisheries in the waters embarced in the issues of boundary, the effort was made to adopt such compromises as seemed reasonable and just.

At the joint meeting in Baltimore, held in October, 1872, after much conference and discussion, and after the statements on both parts were heard and considered, the commissioners on the part of Maryland proposed that the line of boundary between the two states should begin *at low water mark*, on the divisional line between the two states of West Virginia and Virginia, on the southwest shore of the Potomac river, and thence follow the *said shore at low water mark* to all wharves and other improvements now or hereafter extended by authority of Va. from the Virginia shore, into said river beyond low water mark; and following said river around said wharves, &c., to low water mark on the southwestern side, down to the easternmost angle of Smith's point, at the mouth of said river; thence by a right line to the center of Cedar straits on Tangier sound, near the southern end of Watkins' point, and thence by a right line in a southeasterly direction to the channel of Pocomoke bay or river nearest to Cedar straits; and thence up, by and with the channel of said bay and river to a point therein opposite to the place on the east shore of said Pocomoke river, ascertained by Mr. De La
731 Camp, in 1857, as the beginning on said shore of the divisional line run and marked by Calvert and Scarborough in 1668; and thence by and with said divisional line as surveyed and laid down on the map made by said De La Camp for the joint commissioners of Maryland and Virginia in 1858, to the Atlantic ocean.

The right of fishing and taking oysters in Pocomoke bay and river to be common to the citizens of both states, subject to concurrent regulations by the two states.

This proposition was respectfully declined by the commissioners of Virginia, and they in turn proposed:

That the northern boundary line of Virginia shall henceforth be fixed and established at low water mark on the left or northern shore of the Potomac river, for the whole extent of that shore coterminous between Maryland and Virginia, to the extreme end of Point Lookout, where it disembogues into the Chesapeake bay; thence by a right line to the extremest part of the westernmost angle of Watkins' point, it being the northern headland of Little Annamessex river; and thence by and with the line run by Philip Calvert and Edmund

Scarborough in the year 1668, over the Pocomoke river and Swanseagut creek, to the shore of the Atlantic ocean, on Assateague island.

The commissioners of Maryland respectfully declined this proposition, and proposed, by way of compromise, their second proposition:

To begin at the point as described in their first offer of compromise, and to run, as therein described, to Smith's point; and thence by a line across Smith's island, to the place on Jane's island bar where the light-house stands; thence by a right line to the center of Cedar straits; thence to the channel of Pocomoke bay; and thence up, by and with said channel said bay and river, and by and with the Scarborough and Calvert line, to the ocean, as described in their first offer of compromise.

732 This proposition was declined by the commissioners of Virginia, and they then offered their second compromise:

To establish the part of the Calvert and Scarborough line now marked between the right bank of the Pocomoke river and the ocean; and from the terminus of said line on the right bank of the Pocomoke river, to follow said river thence down the same to the eastern headland of East creek on said river; thence by a right line, to the middle of the channel of Cedar straits, and through said straits, northwesterly, to a point due south from the western headland of said straits; thence to low-water mark of the shore of said headland; thence north to low-water mark on the shore of the north headland of Little Annamessex river; thence to the point where the 38th degree of N. latitude cuts across the Tangier sound and Smith's island, at or near Barnes' point thereon; thence along the shores of the north end of Smith's island at low-water mark, on Kedge's straits, until it reaches the shore of that island on the Chesapeake bay; thence following that shore at low-water mark, until it reaches the said parallel of 38° N. L., at or near the great thoroughfare of Smith's island; thence to run on said parallel to the point where the said parallel is cut by a meridianal line drawn through the extreme southern angle of Point Lookout, at the mouth of the Potomac river; and thence up that river, on the main channel thereof, to the point in that river at or opposite to where the divisional line between Va. and W. Va. touches said river Potomac.

This proposition was respectfully declined by the commissioners of Maryland, and then the commissioners of Virginia offered their third proposition of compromise:

That the line between Md. and Va. shall run by and with the main channel of the Potomac river until it descends to the point where the meridianal line drawn through the extreme south-
733 eastern angle of Point Lookout cuts the parallel of the 38th degree of N. L.; thence in a right line to the westernmost angle of Watkins' point, it being the northern headland of the mouth of Little Annamessex river; thence by a right line to the southwestern angle of the land and marsh at Cedar straits, north of these straits; thence to the main channel of these straits, north of the most northern of the Fox islands; thence due east to the channel of the Pocomoke sound or river; thence up the main channel of said sound and river to the place where the Calvert and Scarborough

line was run "over" that river in the year 1668; and thence by the marks and monuments on that line, to the shore of the Atlantic ocean on the Assateague island.

The commissioners on the part of Maryland respectfully declined this proposition, and then offered the following compromise:

To begin at the point on the Potomac river and run down the same to Smith's point, as described in their first offer of compromise; thence by a right line to the center of the great thoroughfare of Smith's island, called Mister's thoroughfare; thence by and with the middle of said thoroughfare to the mouth thereof at Tangier sound, at a place called Big Island; thence by a right line through the center of Cedar straits, to the channel of the Pocomoke sound or bay; and thence up, by and with the channel of said sound and Pocomoke river, to the point opposite to the Calvert-Scarborough line, as described in their first offer; and thence by and with the Calvert-Scarborough line to the Atlantic ocean.

They announced that this was their last offer of compromise, and, if accepted, it must be with the understanding that all existing titles, rights, and liens upon the land south of that thoroughfare, granted by Lord Baltimore, shall continue in force and be held valid in law as if granted by Virginia, &c.

This proposition was respectfully declined by the commissioners of Virginia, and they announced that they had no other proposition of compromise to submit on their part.

734 The com'rs thereupon adjourned, to meet at Richmond, Va., on Thursday, the 7th November, 1872. Failing to meet, owing to unforseen and unavoidable causes, according to this appointment, and other causes intervening to postpone their assembling, the commissioners of the two states held their last joint meeting, in November last, at Baltimore, commencing on the 18th of that month. After considering various maps, papers, patents, deeds, and especially a map preserved by the historical society of Maryland, said to be dated in the year 1695, which shows that *the Scarborough and Calvert line was run and marked*, though it don't lay the line down accurately in any particular corresponding with the com'rs' report in 1668, and especially also a paper signed *"James Boyle,"* in relation to the western boundary of Maryland; and after three days of conference, the commissions on the part of Virginia offered as a compromise the following proposition in substance:

To divide by the channel of Potomac, on the western shore. The com'rs on the part of Maryland stated that they preferred to leave the boundary on the Potomac as it was left by the constitution of Virginia in 1776, and by the compact of the two states in 1785; and they proposed to consider the adjustment of the boundary from Smith's point, across the Chesapeake bay and the Eastern shore to the ocean. The com'rs of Virginia thereupon called for any proposition of compromise of the line over the Chesapeake bay and across the Eastern Shore which the com'rs of Maryland had to submit.

And the com'rs of Maryland proposed:

"The boundary from Smith's point to be a right line across the Chesapeake bay, to the centre of Cedar straits upon the Tangier

sound, near the southern end of Watkins' point; thence by a right line in a southeasterly direction to the channel of Pocomoke bay or river nearest to Cedar straits; thence up, by and with the channel of Pocomoke bay and river, to a point therein opposite to the place on the east shore of said river ascertained by Mr. De La Camp in 1857, to be the beginning, on said shore, of the divisional line said to have been run and marked by Calvert and Scarborough in 1668; and thence by and with said divisional line, as surveyed and laid
735 down on the map made by said De la Camp for the joint commission of Virginia and Maryland in 1858, to the Atlantic ocean. The right of fishing and taking oysters in Pocomoke sound or bay and river, and in Tangier sound from the southern end of Watt's island and Tangier islands to the north end of Deal's island, and west to the Chesapeake bay, to be common to the citizens of both states, subject to concurrent regulations by the two states."

This proposition was respectfully declined by the com'rs of Virginia, and the commissioners on the part of Maryland announced that they had no other proposition of compromise to offer. The commissioners on the part of Virginia then offered the following:

To commence at the point in the mouth of the Potomac river where the meridian of Point Lookout cuts the 38th parallel of N. L., and thence to run a right line to the low water mark of the north headland of Little Annamessex river; thence a right line to low water mark at the end of Watkins' point at Cedar straits; thence to the channel of said straits; thence a right line to the mouth of East creek at the head of Pocomoke sound; and thence on and by the right bank of Pocomoke river to the point where the line run by Philip Calvert, on the part of Maryland, and Edmund Scarborough, on the part of Virginia, in the year 1668, crosses said river Pocomoke; and thence by said Calvert and Scarborough line to the ocean.

This proposition was declined by the com'rs of Maryland; and those on the part of Virginia offered the following:

To commence as by the last proposition, and to run on the 38th parallel of N. L. until said parallel reaches low water mark on the eastern coast of Smith's island; thence to run a right line to the former location of a light boat as described in the maps reported by Michler and De la Camp, in the years 1857-8-9, near the north headland of Little Annamessex river on Janes island; and thence a right line to the channel of Cedar straits; and thence a right line to the head of Pocomoke sound and up the Pocomoke river to the
736 Scarborough and Calvert line; and thence across the same by the Calvert and Scarborough line of 1668, to the ocean.

This proposition was respectfully declined by the com'rs of Maryland, and the commissioners of Virginia announced that they had no other proposition of compromise to submit. And with these proceedings the joint commission concluded its labors, which were conducted throughout with the utmost fairness, with the most faithful regard to duty and their very important trust, and with the kindest feelings of personal respect.

No one can regret this disagreement more than the undersigned. After patient research, study and labor for three years to ascertain

the truth of history, to find the original muniments of title; and to vouch the proof and test the evidence of boundary, and to construct the fair arguments and conclusions upon the issues in controversy, and after proposing every form of compromise which seemed reasonable and liberal as well as just, they cannot but profoundly regret that their labors have been in vain; but, at the same time, must add that, in their humble opinions, the state of Virginia *must continue to claim more than the com'rs of Maryland consented to yield.* The territory and eminent domain in dispute involves a very large amount in value—no less than *all the water power, all the isles, all the alluvium, and all the raparian rights and rights of jurisdiction of the river Potomac* bounding *the two states on the western shore of the Chesapeake bay;* and *forty square miles of territory between Little Annamessex river and the head of Pocomoke sound and on Smith's island; and one hundred and fifty square miles of waters in the Chesapeake bay and in Tangier and Pocomoke sounds, embracing the main seed-beds of oysters in the waters of the Chesapeake bay and on the Eastern Shore.*

The water-power on both sides of the Potomac at the falls above Georgetown and Washington city, and the alluvium between Georgetown and the Long Bridge, in front of the public grounds of the government, and the fisheries and lands on the isles of the Potomac, and the territory and the oyster beds on the Eastern
737 Shore, cannot be of less value than twenty millions of dollars. Virginia has about 1700 square miles, and Maryland only about 700 square miles in the Chesapeake, and yet, if Maryland acquires the seed-beds of Tangier and Pocomoke sounds, her lesser domain will be as valuable as the greater owned by Virginia.

Whenever the lines are established they should be fixed by monuments the most permanent. The undersigned are informed that the marks of trees and posts east of the Pocomoke river, on the Eastern Shore, already begin to be obliterated; that some of them are in heavy forests where the wood-cutters are at work and where large fires are frequent. This ought to be attended to at once.

Another fact needs immediate attention: The terminus of boundary on the shore of Assateague island is now uncertain because it has been obliterated by the winds and blowing sounds of the beach, and common humanity requires that there should be no uncertainty as to which wreck-masters—those of Virginia or of Maryland—shall take charge of shipwrecks on that part of the coast. In a word the subject is of the utmost concern in point of magnitude and in all of its details.

Having fully performed their duties, and developed the data for investigation and the issues to be determined, they submit to the executive and general assembly to decide what other and further steps shall be taken to maintain and establish the rights of this commonwealth to her true bounds and limits.

They have omitted to notice in this report what is called the Compact between the two states in the year 1785, because it was a joint act which did not pretend even to fix boundaries; because it expressly assumed certain boundaries to be in dispute and unsettled; because

it was but a temporary expedient to regulate commerce and navigation between the two states, and because, in that respect, if not in all respects, it has been superseded by the adoption of the constitution of the United States.

Respectfully,

HENRY A. WISE,
D. C. DE JARNETTE,
WM. WATTS.

To His Excellency James L. Kemper, Governor of Virginia.

* * * * * * *

738 *Partial List of Virginia Patents Along Western Boundary of Maryland.*

Name.	Date.	No. of acres.	Date of survey.
John Petty John	Apr. 20, 1784	400	May 30, 1781
" "	May 1, 1784	330	April 20, 1782
Zarah Osborne	June 24, 1785	660	April 20, 1782
Francis & William Deakins	Sep. 22, 1789	6000	May 10, 1788
" " "	June 10, 1794	2000	Oct. 10, 1789
" " "	June 20, 1794	1900	Oct. 18, 1792
" " "	May 24, 1796	100	April 18, 1794
" " "	June 2, 1796	10050	Nov. 28, 1794
Jacob Thomas	Jan. 18, 1837	100	
Isaac James	Nov. 28, 1839	220	May 28, 1838
Jacob Myers	Oct. 30, 1841	84	Nov. 15, 1840
John Hoye	Dec. 31, 1844	72	May 29, 1844
Hillery Griffin & Co	Sep. 1, 1851	200	Jan. 3, 1850
E. C. Wilson & Co	Feb. 1, 1854	600	April 27, 1853
Samuel Boger	May 1, 1860	157	July 6, 1859
" "	" " "	80	

(Endorsed:) Maryland *v.* West Virginia. Defendant's Exhibit N. Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

739 Benjamin Harrison, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of a certificate in right of settlement, given by the "Commisioners for adjusting the titles to unpatented lands in Districts of Monongalia, Yohogania & Ohio and in consideration of 2 pounds sterling paid by Jno' Petty John, there is granted by the said Commonwealth unto John Petty John, a certain Tract or parcel of Land, containing 400 Acres by survey bearing date of the 30th day of May, 1781, lying and being in the County of Monongalia on the head waters of the Yohogania River adjoining the Maryland line, including his improvement made thereon in the year 1776, and bounded as followeth, to wit: Beginning at a white oak in Maryland line and running thence N. 47½° W. 78 p° to a cherry tree, N. 80° W. 34 p° to a cherry tree on a branch of Yohogania, N. 40° W. 21 p° crossing Yohogania to a white oak, N. 70° W. 68 p° to a hickory, Due S. 36 p° to a white oak Pointers, S. 21° W. 72 p°

to a maple S. 178 p° to Pointers S. 52° W. 44 p° to a while oak, S. 73° E. 220 p° to Pointers in the Maryland line, and with said line N. 226 p° to the beginning with its appurtenances.

Book K. Page 609.

Acres 400.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Petty John, and his heirs forever,

In witness whereof, The said Benj. Harrison, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond on the 20th. day of April, in the year of our Lord one thousand 784, and of the Commonwealth the 8th.

BENJAMIN HARRISON,

LAND OFFICE, RICHMOND, VA.

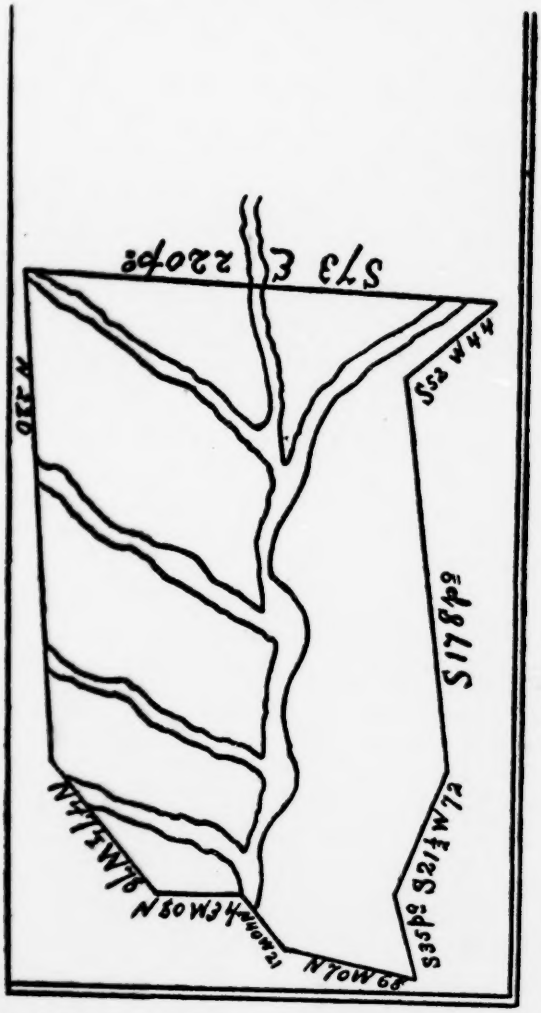
I hereby certify that the foregoing is a true copy from the records of this office, Witness my hand and seal of office, this 29th day of September, 1892.

[SEAL.]

W. R. GAINES,
Register of the Land Office.

740 (Endorsed:) Jno. Petty John 400 acres Maryland *vs.* West Virginia Defendant's Exhibit N. No. 1. Patent. Supreme Court U. S. No. 1, Original. October Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

741 Jno. Petty John, 400 Acres, Monongalia Co. Re'd 20 June, 1783. G't Iss'd 20 Ap'l, 1784.



May 30th, 1781 Surveyed for John Petty John 400 acres of Land in Monongalia County on the waters of Yohogania River adjoining the Maryland lying in the right of Residence Including his improvement made thereon in the year 1776, agreeable to a certificate from the Commissioners for adjusting the claims to unpatented lands in the County-s of Monongalia, Yohogania & Ohio dated 20th day of March, 1781, Bounded as follows, viz: Beginning at a white

oak in the Maryland line & running thence N. 47½° W. 78 p° to cherry tree, N. 80° W. 34 p° to cherry tree on a branch of Yohogania, N. 40° W. 21 p° crossing Yo- to a white oak, N. 70° W. 68 p° to a hickory. Due S. 36 p° to a white oak, and Pointers, S. 21° W. 72 p° to a maple. S. 178 p° to Pointers. S. 52° W. 44 p° to white oak, S. 73° E. 220 p° to Pointers in the Maryland line & with s'd line N. 226 p° to the Beginning. Plotted by scale of 80 p° to inch.

Vari., 20′ west.
Book 4, page 595.
Acres, 400.

SAM'L HANWAY,
Ass't to John Madison, S. M. Co.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the Records of this Office. Witness my hand and seal of office this 3d day of October, 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 1 Survey.

742 Benjamin Harrison, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of and in consideration of part of Land Office Treasury Warrant No. 1692, issued the 20th day of Octo. 1781, there is granted by the said Commonwealth unto John Petty John a certain Tract or parcel of Land, containing 330 Acres, by survey bearing date the 20th day of April, 1782, lying and being in the County of Monongalia on the waters of the Yohogania adjoining his residence survey, and bounded as followeth, to wit:

Beginning at Pointers in the Maryland line and corner to his Residence Survey and Running with said Maryland line S. 212 p° to a white oak, thence S. 45° W. 104 p° to a cherry tree N. 45° W. 104 p° to pointers corner to Zerack Osborn's Residence survey and with his line N. 27° W. 178 p° to a white oak, N. 15° W. 14 p° to a stake, N. 45° W. 44 p° to a cherry tree, N. 10 W.° 52 p° to Pointers S. 80° E. 268 p° to the beginning with its appurtenances.

Book K, page 603.
Acres, —.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Petty John and his heirs forever.

In witness whereof, the said Benjamin Harrison, Esquire, Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the First day of May, in the year of our Lord one thousand 784, and of the Commonwealth the 8th.

BENJAMIN HARRISON.

LAND OFFICE, RICHMOND, VA.

743 I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 29th day of September, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Jno. Pettyjohn. 330 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 2. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

744 Jno. Petty John, 330 Acres, Monongalia. Re'd June 20, 1783. G't Iss'd 1 May, 1784.

April 20th, 1782 Surveyed for John Petty John 330 acres of Land in Monongalia County on the waters of Yohogania, adjoining his Residence survey on and in part of a preemption Warrant for 1000 acres No. 1692 & dated the 20th of October 1782, and bounded as followeth viz: Beginning at Pointers in the Maryland line and corner to his Residence Survey & running with said Maryland line S. 212 p° to a white oak, thence S. 45° W. 104 p° to a cherry tree, N. 45° W. 104 p° to Pointers corner to Zearah Orsburns' Residence Survey & with his line N. 27° W. 178 p° to a white oak, N. 15° W. 14 p° to a stake, N. 45° W. 44 p° to a cherry tree, N. 10° W. 54 p° to Pointers, S. 80° E. 268 p° to the beginning. Plotted by a scale of 50 p° to Inch. Vari. 20′ West.
Book 4, page 595.
Acres, 330.

SAM'L HANWAY,
Ass't to John Madison.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of office, this 3d of October, 1892.

W. R. GAINES, [SEAL.]
Register Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 2 Survey.

745 Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of part of a Preemption Office Treasury Warrant No. 1692, issued 20th Octo. 1781 there is granted by the said Commonwealth unto Zarah Osborne, a certain Tract or parcel of Land, containing 660 Acres, by survey bearing date the 20th day of April, 1782, lying and being in the County of Monongalia, on

the waters of the Yohogania adjoining the Lands of John Petty John and bounded as followeth to wit: Beginning at Pointers in the Maryland Line, corner to John Petty John and Running with the Maryland Line due S. 280 p° to a maple, W. 30 p° to Pointers, N. 34 p° to a maple, W. 140 p° to pointers, S. 34 p° to a white oak W. 56 p° to a white oak, N. 48 p° to pointers, W. 34 p° to a forked Fir tree, N. 40 p° to Pointers, W. 140 p° to Pointers, S. 120 p° to Maple Pointers, W. 80 p. to a service, N. 80 p. to a white oak, W. 20 p. to a Pointer, N. 27° W. 80 p° to a maple, N. 63° E. 40 p° to a hickory, N. 50° E. 170 p° to Pointers in the Line of said Osborne's Residence Survey & with said Line S. 27½° E. 144 poles to a cherry tree, N. 70° E. 220 p° to Pointers corner to said Pettyjohn & with his line, S. 45° E. 104 p° to a cherry tree, N. 45° E. 104 p° to the Beginning with its appurtenances.

Book A, page 250.

Acres, 660.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Zarah Osborne and his heirs forever.

In witness whereof, the said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 24th day of June, in the year of our Lord one thousand 785, and of the Commonwealth the 9th.

P. HENRY.

746 LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this First day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Zarah Osborn. 660 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 3. Patent.

(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

747 Zarah Osborne, 660 Acres, Monongalia County. Re'd 27 Nov., 1784. G't Iss'd 24 June, 1785.

April 20th, 1782 Surveyed for Zarah Osborne 660 acres Land in Monongalia County on the waters of the Yohogania adjoining the Lands of John Petty John on and in part of a preemption Warrant for 1000 acres of s'd John Petty John & assigned by him to the said Osborne No. 1962, & dated 20th Octo. 1781, and bounded as followeth, to wit: Beginning at Pointers in the Maryland Line corner to John Petty John & running with the Maryland — Due S. 280 p° to a maple, W. 30 p° to Pointers, N. 34 p° to a maple W. 140 p° to Pointers S. 34 p° to a white oak, W. 56 p° to a white oak, N. 48 p° to Pointers, W. 34 p° to a forked fir tree, N. 40 p° to Pointers,

W. 140 p° to Pointers, S. 120 p° to a maple and pointers, W. 80 p° to a service, N. 80 p° to a white oak, W. 20 p° to Pointers, N. 27° W. 180 p° to a maple, N. 63° E. 40 p° to a hickory, N. 50° E. 170 p° to pointers in the line of s'd Osborn's Residence Survey, and with said line, S. 27½° E. 144 p° to a cherry tree, N. 70° E. 220 p° to Pointers corner to said Petty John, & with his line S. 45° E. 104 p° to a cherry tree, N. 45° E. 104 p° to the Beginning.

Plotted on a scale of 80 p° to the Inch.

Variation, 20′ west.

SAM HANWAY, *S. M. C.*

Book 9, page 230.

Acres, 660.

748 LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of Office, this 3d day of October, 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 3. Survey.

749 Beverley Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of and in consideration of part of 3 Land Office Treasury Warrants Nos. 15,557, issued 3d May, No. 15,260 issued 2d April, No. 20,989 iss'd 1 Dec'*d* all in year 1783, also part of 4 warrants Nos. 6180, 6181, 6198 and 6195, all iss'd 10th Feb'y, 1781 there is granted by the said commonwealth, unto Francis Deakins and William Deakins, a certain tract or parcel of land containing 6000 Acres by survey bearing date the 10th day of May, 1788, lying and being in the county of Monongalia on & between the head of Murleys and Snow Glade Creek, Joining the head of Maryland, Including a Marsh & between the Sn-ggy Mountain and Pine Swamps, on waters of the Yohogania River, Including the Ridge, and bounded as followeth, to Wit: Beginning at a Red Oak it being the beginning tree of a survey of 400 Acres made for George Apley, & running with his line S. 22° W. 200 p° to 2 white oaks & hickory a corner of Francis & William Deakins' survey of 114 Acres & with it S. 20° E. 60 p° to a Red Oak, S. 55° W. 120 p° to a chesnut thence leaving s'd survey & running S. 74 p° to a line of Francis & Wm. Deakins' survey of 429 acres with it S. 70° E. 142 p° to Pointers, S. 20° W. 222 p° to a Red Oak corner of said tract, S. 80° W. 115 p° to a line of Francis & William Deakins' survey of 529 acres, with it S. 300 p° to a poplar, thence S. 26° W. 76 p° to a red oak, corner to said Deakins' survey of 500 acres & with the same reversed S. 47° E. 196 p° to a Red Oak, S. 10° E. 30 p° to a Red Oak, S. 30° W. 72 p° to 2 sugar trees, & a cucumber tree, N.

90 p° to a white oak, S. 30° W. 92 p° to a White Walnut, Sugar tree & chesnut tree, corner to said Deakins' — of 558 acres, thence S. 20° E. 119 p° to 2 Maples E. 171 p° to a Maple, Servis and Spanish Oak, N. 16° E. 586 p° to 2 chesnut trees, corner to Robt. Hockers' survey of 2251 Acres, with the same N. 42° E. 320 p° to the first line of Francis & Wm. Deakins' survey of 908 acres & with it and their other survey of 354 acres N. 327 p° to a white oak, thence N. 5° E. 138 p° to a white oak, the 3d corner of said Deakins' survey of 222 acres & with it S. 70° W. 146 p° to a white oak, N. 40° W. 160 p° to a hickory N. 46° E. 149 p° to a sugar tree and chesnut, corner of Wm. Ashley's survey of 400 Acres and with it N. 27° E.
750 66 p° to a chesnut, N. 33° W. 70 p° to a white oak, N. 40° E. 52 p° to a white oak, S. 80° E. 175 p° to a white oak, N. 70° E. 58 p° to a hickory, E. 132 p° to a red oak, S. 20° W. 226 p° to a burch, No. 85° W. 110 p° to a maple, S. 45° W. 40 p°—to 3 maples, thence S. 80° E. 40 p° to a Round tree, S. 20° W. 106 p° to the aforesaid White oak, at the end of the 21st line, of this survey and with it reversed S. 5° W. 138 p° to a white oak corner of said Deakins' survey of 354 acres, thence S. 81° E. 122 p° to a servis and maples, corner of Jepee Ashley's survey of 200 Acres, & with it N. 9° E. 200 p° to a service, chesnut and sasafras, N. 89½° E. 196 p° to a tract of land called Ashley's Core, thence N. 10½° E. 41 p° to the 6th line of a tract of Land called Thomas and Ann, and with it reversed the 4 following courses N. 76° W. 40 p°, N. 12½° E. 217 p°, N. 82° E. 169 p°, N. 28° E. 70 p°, N. 675 p° to Albert Gallatins' survey, and with it, W. 590 p° to a tract of land patented in Maryland called Nonparil, thence S. 114 p° to the beginning tree of said land called Nonparil & with the following lines of it reversed S. 24° E. 371 p°, S. 80° W. 90 p°, S. 30° W. 36 p°; S. 40 p°, S. 85 W. 91 p° S. 63° W. 206 p° to Geo. Ashley's Survey of 50 acres, and with it S. 42 E. 13 p. to a chesnut at the end of the 3rd line of said survey, S. 13 E. 108 p. to a white oak, corner to said George Ashley's survey of 400 acres, thence S. 21 E. 96 p. to the Beginning with its appurtenances.

Book 20, page 607.

Acres, 6000.

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis & William Deakins and their heirs forever.

In witness whereof, the said Beverley Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 22d day of September in the year of our Lord one thousand seven hundred and 89 and of the Commonwealth the 14th.

BEVERLEY RANDOLPH.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 30th
751 day of September, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Francis & Wm. Deakins. 6000 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 4. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

752 May 10th, 1788 Surveyed for Francis & William Deakins, 6000 acres of Land in Monongalia County by virtue of the following Warrant to Wit: 500 acres part of a Warrant of 2000 acres No. 577, granted to the aforesaid Wm. Deakins 3d May & entered the 10th September 1786, on Laurel Run a south fork of Snowy Glade Creek, 480 acres part of a Warrant of 2000 acres No. 15260 granted to Michael Ryan the 2nd April, 1783 & assigned to F. & Wm. Deakins and entered June 22d 1784, 500 acres between the head of Murly Run and Snowy Glade Creek joining the head line of Maryland and 340 acres of it Including a marsh 1½ miles North of the above last mentioned entry, 862 acres part of a Warrant of 1000 acres No. 20,989, granted David Anderson 1st December 1783, assigned to Wm. Deakins 400 acres part thereof entered the 14th September 1784, between the Snaggy Mountains & *join* swamps on waters of Yohogania River including the Ridge on one warrant of 1000 acres No. 6180 Granted Sam'l Beall February 1781, assigned to Francis & Wm. Deakins, one Warrant of 1000 acres No. 6181 Granted Sam'l Beall 10 February 1781 & assigned to Francis & Wm. Deakins: one Warrant of 1166 acres No. 6198 Granted Sam'l Beall Feb'y 10th, 1781, and assigned to Francis & Wm. Deakins, and 632 acres, part of a Warrant of 1000 acres No. 6195 Granted Sam'l Beall February 10th, 1781. Bounded as followeth, to Wit: Beginning at a Red oak it being the beginning tree of a survey of 400 acres made for Geo. Ashby and running with his first line S. 22° W. 200 p° to 2 white — and a hickory a corner of Francis and William Deakins' survey of 114 acres & with it S. 20° E. 60 p° to a red oak, S. 55° W. 120 p° to a chesnut, then leaving s'd survey of 114 acres and running S. 74 p° to a line — F. & Wm. Deakins' Survey of 499 acres and with it S. 70° E. 142 p° to pointers, S. 20° W. 222 p° to a red oak the beginning of s'd 499 acres tract, S. 82° W. 115 p° to a Line of F. & Wm. Deakins' Survey of 529 acres & with it S. 300 p° to poplar, then S. 26° W. 76 p° to red oak, corner to F. & Wm. Deakins' Survey of 500 acres & with the same reversed S. 47° E. 196 p° to a Red oak, S. 10° E. 30 p° to a red oak, S. 30° W. 72 p° to 2 sugar trees & a cucumber tree, W. 90 p° to a white oak, S. 30° W. 92 p° to a white walnut, sugar tree & chesnut tree, a corner of said Deakins' survey of 558 acres, then S. 20° E. 119 p° to 2 maples E. 171 p° to a maple, service & spanish oak, N. 16° E. 586 p° to 2 chesnut
753 trees corner to Robt. Hookers' survey of 2251 acres & with the same N. 42° E. 320 p° to the first line of Francis & Wm. Deakins' survey of 908 acres & with it and their other survey of 354 acres N. 327 p° to a white oak, then N. 5° E. 138 p° to a white oak, the 3rd corner of the s'd Deakins' survey of 222 acres, & with it S. 70° W. 146 p° to a white oak, N. 40° W. 160 p° to a hickory, N. 46° E. 149 p° to a sugar tree and chesnut a corner of Wm. Ashley's survey of 400 acres & with it N. 27° E. 66 p° to a chesnut N. 33°

W. 70 p° to a white oak, N. 40° E. 52 p° to a white oak, S. 80° E. 175 p° to a white oak, N. 70° E. 58 p° to a hickory, E. 132 p° to a red oak, S. 20° W. 226 p° to a birch, N. 85° W. 110 p° to a maple, S. 45° W. 40 p° to 3 maples, then S. 80° E. 40 p° to a Round tree, S. 20° W. 106 p° to the aforesaid white oak at the end of the 21st line of this survey, and with it reversed S. 5° W. 138 p° to a white oak, a corner of s'd Deakins' survey of 350 acres, then S. 81° E. 122 p° to a service, & maple corner to Jepee Ashby's Survey of 200 acres & with it N. 9° E. 200 p° to a service, chesnut & sassafras, N. 89½° E. 196 p° to a tract of Land called Ashby's core, then N. 10½° E. 41 p° to the 6th line of a tract of Land called Thomas & Ann & with it reversed the 4 following courses N. 76° W. 40 p° N. 12½° E. 217 p° N. 82° E. 169 p° N. 28° E. 70 p°, then N. 675 p° to Albert Gallatins' survey & with it W. 590 poles to a tract of Land patented in Maryland called Nonpariel, then S. 114 p° to the beginning tree of said land called Nonpariel, and with the 6 following lines of it reversed S. 24° E. 371 p°, S. 80° W. 90 p° S. 30° W. 36 p° S. 40 p° S. 85° W. 91 p° S. 63° W. 206 p° to Geo. Ashby's survey of 50 acres & with it S. 42° E. 13 p° to a chesnut at the end of the 3d line of said survey, S. 13° E. 108 p° to a white oak corner to said George Ashby's survey of 400 acres, then S. 21° E. 96 p° to the first beginning containing 6000 acres.—Surveyed.

JOHN HOOKER,
Ass't to Sam'l Hanway, S. M. C.

Book 12, page 418.
Acres, 6000.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of Office this 4th day
754 of October 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 4 Survey.

755 Henry Lee, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of 5 Land Office Treasury Warrants Nos. 6211; 15578; 15264; 15260 & 6193; there is granted by the said Commonwealth unto Francis and William Deakins, a certain Tract or parcel of Land, containing 2000 Acres, by survey bearing date the 10th day of Octo. 1789, lying and being in the County of Monongalia and bounded as followeth, to wit: Beginning at a marked Maple & 2 White Oaks standing at the end of the 5th Line of F. & W. Deakins' Survey of 1185 acres and running with Salathiel & James Goff survey of 1000 acres as corrected by its call to Zara Osborn's survey S. 79° E. 105 p° to Pointers, a white oak, & chesnut at the end of the 14th line of Zara Osborn's Survey of 660 acres & with said survey reversed E. 20 p° to a white oak, S. 80 p° to a

service, E. 80 p° to a marked white oak, supposed to be Osborn's corner, as his marks lead to it, tho' his survey calls for a service and none is to be found near the corner, still with a marked line said to be Osborn's N. 5° W. 123 p° to a white oak, then E. 140 p° to a maple & white oak, S 3° E. 44 p° to a forked fur tree, E. 34 p° to a Pine, S. 48 p° to a white oak, E. 56 p°, N. 34 p° to Pointers, E. 140 p° to a maple, then leaving Osborn's survey & running S. 24° W. 220 p° to a white walnut and maple, S. 5° E. 267 p° to Pointers, S. 6° W. 274 p° to Pointers, N. 35° W. 88 p° to a service, poplar and white walnut at the end of the 7th line of said Deakins' survey of 1185 acres, & with said 7th line reversed N. 60° E. 160 p° to 3 white oaks, then N. 30° E. 206 p° to the beginning with its appurtenances.

Book 29, page 642.

Acres, 2000.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Francis and William Deakins and their heirs forever.

In witness whereof, the said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his
[SEAL.] 756 hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 10th day of June, in the year of our Lord one thousand 794, and of the Commonwealth the 18th.

[SEAL.] HENRY LEE.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Frances & Wm. Deakins. 2000 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 5. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

757 No. 9. Francis & Wm. Deakins, 2000 Acres, Monongalia. Re'd Mar. 1, 1793. G't Iss'd June 10th, 1794.

October 10th, 1789 Surveyed for Francis & William Deakins 2000 acres of Land in Monongalia County by virtue of the following Land Office Treasury Warrants to wit: 337 acres part of a Warrant of 2000 acres N-. 6211, Granted to Sam'l Beal 10th Feb'y 1781, assigned to Francis & Wm. Deakins and entered for them the 12th November 1782, on the head of Big Yohogania River, 815 acres part of a Warrant of 2000 acres No. 15578, Granted to the aforesaid Wm. Deakins the 3d May 1783 & entered 24th June 1784, on the head of Big Yohogania River & across the Old Horse Shoe road, 397 acres part of a Warrant of 2000 acres No. 15264, Granted to Michael

Ryan 2d April 1783, assig'd to F. & W. Deakins and entered 24th Octo., 1787, adjoining Goffs' Lands, on or about the head waters of Yohogania River. 320 acres part of a Warrant of 2000 acres No. 15260 Granted Michael Ryan 2d April 1783, assigned to F. & W. Deakins now applied to this survey, 131 acres part of Warrant of 1000 acres No. 6193, Granted Sam'l Beal 10th Feb'y 1781, assig'd to F. & W. Deakins and hereunto applied which part of the aforesaid Warrants makes the quantity of 2000 acres bounded as follows to wit: Beginning at a marked maple and 2 white oaks standing at the end of the 5th line of Francis & Wm. Deakins' survey of 1185 acres and running with Salathiel & James Goffs' survey of 1000 acres as corrected by its call to Zera Osburns' survey S. 79°
758 E. 105 p° to pointers a white oak and chestnut at the end of the 14th line of Zera Osburns' Survey of 660 acres and then with s'd survey reversed E. 20 p° to a white oak, S. 80 p° to a service, E. 80 p° to a marked oak, supposed to be Osburns' corner as his marks leads to it, though his certificate calls for a service and none is to be found near this corner. Still with a marked line said to be Osburns' N. 5° W. 123 poles to a white oak, then E. 140 p° to a maple & white oak, S. 3° E. 44 p° to a forked fir tree, E. 34 p° to a pine, S. 48 p° to a white oak, E. 56 p° N. 34 p° to pointers, E. 140 p° to a maple, then leaving Osburns' survey and running S. 24° W. 220 p° to a white walnut & maple, S. 5° E. 267 p° to pointers, S. 6° W. 274 p° to pointers, then N. 55° W. 880 p° to a service, poplar, white walnut at the end of the 7th line of Francis & William Deakins' Survey of 1185 acres and with the said 7th line reversed N. 60° E. 160 p° to 3 white oaks, then N. 30° E. 206 p° to the beginning.

JOHN LYNN,
Ass't to Sam'l Hanway, S. M. C.

JOHN STOUT &
G. GOFF,
C. M.

Book 27, page 616.
Acres, 2000.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of Office, this 4th October, 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 5. Survey.

759 Henry Lee, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of Land Office Treasury Warrant No. 21353, also Exchange Warrant No. 11, iss'd 21st June 1783, there is granted by the said Commonwealth unto Francis and William

Deakins, a certain Tract or parcel of Land, containing 1900 Acres, by survey bearing date the 18th of October, 1792, lying and being in the County of Monongalia adjoining a former tract of said Deakins' of 558 acres & Sundry others & bounded as followeth, to wit: Beginning at a sugar tree at the end of the first line of thier survey of 500 acres and running with their tract of 6000 acres, S. 20° E. 119 p° to a white oak, maple and Spanish oak, E. 156 p° to 3 white oaks, 2 chesnuts & hickory, thence S. 25° E. 62 p° to a cucumber, S. 30° W. 26 p° to a poplar, S. 45° E. 166 p° to 2 chesnuts and a maple, S. 52° E. 134 p° to 3 large Spanish oaks, S. 11° E. 59 p° to a Spanish oak, S. 60° E. 32 p° to a birch and beech about 3 p° west of a branch on a line of Benjamin Stoddarts' Land and with it S. 177 p° to an ash & 2 Spanish oaks, now marked at the end, of Stoddarts' 3d line & then S. 200 p° to the end of 215 p° to the first line of Thomas James Goffs' survey of 800 acres as now established by contract between Goff, Woodring & Deakins, thus with Goffs' said first line N. 33° W. 105 p° to a birch the 3rd corner of said Deakins' tract of 269 acres & with the same S. 85° W. 12 p° to a chesnut, N. 5° W. 36 p° to a sugar tree, N. 70° W. 56 p° to a maple, N. 37° W. 76 p° to a birch, S. 40° W. 118 p° to a poplar standing at the end of 10 p° of the 3rd line of Goffs' aforesaid tract of 800 acres & with it S. 56° W. 40 p° to a sugar tree now agreed to be marked by the owners for *his* 3rd corner, thence running with Goffs' 4th line corrected by agreement in order to get a bounded hickory called for in Goffs' patent S. 45° W. 155 p° to the end of 6° on the 9th line of Deakins' old tract of 1000 acres, & with s'd tract N. 51° W. 270 p° to 2 birches the 3d corner of s'd Deakins' Tract of 882 acres, & with it N. 15° E. 140 p° to 2 birches and maple, N. 31° W. 134 p° to 2 sugar trees a corner of Deakins' tract of 558 acres & with
760 it N. 9° E. 170 p° to a sugar tree and service, N. 57° E. 204 p° to 2 white oaks & a maple, thence N. 12° W. 160 p° to the beginning with its appurtenances.

Book 29, page 645.

Acres, 1900.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Francis & William Deakins and their heirs forever,

In witness whereof, The said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his
[SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 20th day of June, in the year of our Lord one thousand 794, and of the Commonwealth the 18th.

HENRY LEE.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Francis & Wm. Deakins. 1900 acres. Maryland *v.* West Virginia. Defendant's Exhibit N. No. 6 Patent.
(Endorsed:) Supreme Court U. S., No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

761 Francis & Wm. Deakins, 1900 Acres, Monongalia County. Re'd Mar. 1st, 1793. Gt. Iss'd 21 June, 1794.

Octo. 18th, 1892, Surveyed for Francis & William Deakins 1900 acres of Land in Monongalia County by Virtue of the following Land Office Treasury Warrant to Wit: 1700 Acres part of a Warrant of 6000 acres No. 11 Granted to Daniel Hickey 21st June 1783 & 200 acres part of Warrant of 1000 acres No. 21,315, Granted to Thomas Chambers 13th Dec'm'b 1783 & entered the 15th of Octo. 1792, adjoining a former tract of s'd Deakins of 558 acres & sundry others. Beginning at a sugar tree at the end of the 1st line of their survey of 500 acres & running with their tract of 6000 acres S. 20° E. 119 p° to white oak, maple & spanish E. 156 p° to 3 white oaks, 2 chesnuts & a hickory then S. 25° E. 62 p° to a cucumber, S. 30° W. 28 p° to a poplar, S. 45° E. 166 p° to 2 chesnuts & maple S. 52° E. 134 p° to 3 large spanish oaks, S. 11° E. 59 p° to a spanish oak, S. 60° E. 32 p° to a birch and beech 3 p° West of a branch on a line of Benjamin Stoddarts' land & with it S. 177 p° to an ash & 2 spanish oaks, now marked at the end of Stoddarts' s'd line, then S. 200 p° to the end of 215 p° on the first line of Thomas James Goffs' survey on 800 acres, as now established by contract between Goff Woodring & Deakins, then with said Goffs' first kine N. 33° W. 105 p° to burch, the s'd corner of s'd Deakins' tract of 269 acres with the same S. 85° W. 12 p° to a chesnut, N. 5° W. 36 p° to a sugar tree, N. 70° W. 56 p° to a maple, N. 37° W. 76 p° to a birch, S. 40° W. 118 p° to a poplar standing at the end of
762 10 p° on the 3'd line of Goff's afores'd tract of 800 acres & with it S. 56° W. 40 p° to a sugar tree, now agreed to be marked by the owners for his 3'd corner, running with Goffs' 4th line corrected by agreement in order to get a bounded hickory called for in Goffs' patent. S. 45° W. 155 p° to the end of 6 p° on the 9th line of Deakins' old tract of 1000 acres & with said tract N. 51° W. 270 p° to 2 birches the 3'd corner of Deakins' tract of 882 acres & with it N. 15° E. 140 p° to 2 burches & a maple N. 31° W. 134 p° to 2 sugar trees a corner of Deakins' tract of 558 acres & with it N. 9° E. 170 p° to a Sugar tree & service, N. 57° E. 204 p° to 2 white oaks and a maple, N. 12° W. 160 p° to the beginning.

JOHN COMPTON,
Ass't to Sam'l Hanway, S. M. C.

Book 27, page 611.
Acres, 1900.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of office this 4th October, 1892.

W. R. GAINES, [SEAL.]
Register Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 6. Survey.

763 Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of Land Office Treasury Warrant No. 15,899, issued 8th May, 1783, there is granted by the said Commonwealth unto Francis & William Deakins a certain Tract or parcel of Land, containing 100 Acres, by survey bearing date the 18th day of April, 1794, lying and being in the County of Monongalia and bounded as followeth, to Wit: Beginning at a Maple and Ash standing at *the end of the* N. 56° E. 74 p°—line of Robert Hookers' tract of 2251 acres & running thence with said tract S. 54° E. 108 p° to a maple, S. 81° E. 45 p° to a line of Johnsons' Maryland survey called Kindness and with said tract N. 30° W. 318 p° to the South line of said Deakins' survey of 908 acres & with it S. 219 p° to Hookers' tract aforesaid, thence with it N. 56° E. 29 p° to the beginning with its appurtenances,

Book 35, page 182.
Acres, 100.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Francis & William Deakins and their heirs forever.

In witness whereof, The said Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 4th day of May, in the year of our Lord one thousand 796, and of the Commonwealth the 20th.

ROBERT BROOKE.

764 LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Francis & Wm. Deakins. 100 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 7. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original. Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

765 Francis & Wm. Deakins, 100 Acres, Monongalia. Re'd 17 June, 1794. Gt. Iss'd 4 May, 1796.

April 18th, 1794, Surveyed for Francis & Wm. Deakins 100 acres of land in Monongalia County by virtue of the following Land Office Treasury Warrant of 4000 acres No. 15899, Granted Wm. McWilliams the 8th May 1783, and assigned to the said Francis & William Deakins & entered 3d day of April 1794, bounded as follows: Beginning at a maple, birch and ash standing at the end of the N. 56° E. 74 p° line of Robt. Hookers' tract of 2251 acres and running thence with said tract, S. 54° E. 108 p° to a maple, S. 81° E. 45 p° to a line of Johnsons' Maryland Survey, called Kindness, and with said tract N. 30° W. 318 p° to the south line of said Deakins' survey of 908 acres, and with it S. 219 p° to Hookers' tract aforesaid, thence with N. 56° E. 29 p° to the beginning.

JOHN COMPTON,
Ass't to Sam'l Hanway, S. M. Co.

Book 29, page 284.
Acres, 100.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the Records of this office. Witness my hand and seal of office, this 4th October, 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 7. Survey.

766 Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That by virtue of 10 Land Office Treasury Warrants Nos. 15325; 9431; 15311; 434; 17762; 18585; 18961; 19475; 14609 and 16742, there is granted by the said Commonwealth, unto Francis Deakins & William Deakins a certain tract or parcel of land containing 10050 Acres, by survey bearing date the 28th day of August, 1794, lying and being in the County of Monongalia, & bounded as followeth, to Wit:

Beginning at a white oak near the Beginning of Francis & William Deakins' 52 acres tract, and running thence with the last line reversed S. 81° 320 p° to a red oak, thence S. 26° W. 78 p° to a white walnut & 2 chesnut trees, thence along a line of Shatsmans' 500 acres tract S. 38° W. 432 p° to a white walnut, Locust and Hickory the beginning of said tract, it also being the 4th corner of Henry Dises' 558 acre tract, then with the 558 acre tract aforesaid S. 35° W. 68 p° to 2 sugar trees & a cherry tree, thence S. 10° W. 140 p° to a sugar tree, Hickory & Lynn, thence S. 25° W. 154 p° to 3 sugar trees corner to Hogmires' 882 acre tract, thence with it S. 55° W. 100 p° to a sugar tree & Hickory, thence S. 25°

W. 70 p° to a cherry tree, thence S. 25 W. 70 p°, thence S. 34 p° to 2 sugar trees & a birch, thence S. 30° W. 343 p° to a sugar tree, Hickory, & ash, thence S. 64° W. 52 p° to a maple & 2 hickories, thence S. 4° E. 116 p° to 2 sugar trees and a hickory, thence N. 75¼° E. 340 p° crossing a branch of Wolf creek to a white oak, the beginning of the aforesaid 882 acre tract, thence N. 66 p° thence S. 18° E. 100 p° thence S. 18° W. 46 p° to a former survey of the aforesaid Deakins; thence with a line thereof S. 40° W. 462 p° to a chesnut corner to Godfrey Stemples' 200 acre tract, thence with s'd tract reversed N. 13° W. 91 p° to Pointers, thence
767 N. 64° W. 40 p° to a chesnut, thence leaving s'd tract N. 59° W. 206 p° crossing Wolf creek to 2 white oaks, thence N. 32° W. 210 p° to a sugar tree corner to Francis & William Deakins' tract of 281 acres & with it reversed N. 42° E. 68 p° to a white walnut, thence S. 55° E. 4 p° to 4 small dogwoods, the 5th corner of Miles 238 acres tract, thence with s'd Miles' land reversed N. 35° E. 20 p° to 2 sugar trees & a hickory, thence N. 70° E. 64 p° to 2 sugar trees & a hickory, thence N. 40° E. 154 p° to a white oak, thence N. 14° E. 92 p° to a sugar tree, thence N. 65° W. 102 p° to 2 sugar trees from one stump, Beginning of s'd tract, still with said tract reversed S. 38¼° W. 295 p° to a maple, the Beginning of s'd Deakins' 281 acre tract, thence with it reversed S. 72½° W. 185 p° crossing a branch of Salt Lick to a sugar, thence S. 22° W. 86 p° to 2 dogwoods and a hickory, thence S. 10° E. 65 p° to a Poplar, thence E. 172 p° crossing a branch of Wolf creek to 2 small maples, thence S. 20° E. 31 p° to a chesnut, thence S. 50° E. 42 p° to a maple, thence E. 14 p° to 2 hickories and a sugar tree, thence N. 45° E. 25 p° to 2 ashes and a maple, thence N. 10° W. 49 p° to a hickory, thence N. 30° E. 35 p° to a maple, thence N. 55° W. 39 p° to a hickory, thence N. 11° E. 52 p° to a sugar tree, thence S. 32° E. 210 p° to 2 white oaks, thence S. 38° W. 374 p°, thence W. 220 p° to a sugar tree, corner to Wallace & Muirs' tract of 617 acres, and with the line of said tract reversed N. 65° W. 286 p° to a white oak and birch, thence S. 42° W. 86 p° to a beech, thence S. 8° W. 69 p° to a maple, thence S. 30° W. 121 p° to a birch, the beginning of s'd tract, also a corner of s'd Deakins 897 acres tract, thence with the following lines of said tract N. 10° E. 272 p° to a sugar tree, thence N. 15° W. 100 p° to a maple, thence N. 28° W. 108 p° to the end of 162 p° in the last line of Deakins 300 acre tract & with the said line reversed N. 78° E. 162 p° to a sugar tree, the beginning of Wallace & Muirs' 634 acres tract, & with it reversed N. 76° E. 360 p° to a hickory, thence
768 N. 200 p° to a poplar, thence N. 60° W. 160 p° to a sugar tree, thence S. 70° W. 122 p° to a sugar tree, thence S. 45° E. 16 p° to a poplar, thence S. 70° W. 96 p° to a Locust, thence S. 36° W. 60 p° to a poplar, thence leaving s'd tract N. 370 p° to a white oak, the last corner of s'd Deakins tract of 82 acres, thence with said tract reversed S. 55° E. 60 p° to a red oak, thence N. 60° E. 80 p° to a maple, thence N. 25° E. 40 p° to a white oak, thence N. 27° W. 100 p° to a white oak, thence leaving s'd tract & running N. 72° E. 112 p° to a white oak at the end of the 3d line

of s'd Deakins' 141 acre tract, thence with it S. 20° E. 48 p° to a poplar, thence N. 59° E. 30 p° to a poplar, thence N. 42° E. 185 p° to a Poplar the beginning of s'd tract, thence leaving said tract & running N. 84° E. 416 p° to a white oak at the end of the 7th line of the aforesaid Deakins' tract of 560 acres, thence with it reversed E. 230 p° to a white oak, thence N. 60° E. 80 p° to maple, thence N. 68° E. 180 p° to a beech, thence N. 15° E. 68 p° to a maple, N. 54° W. 200 p° to a Poplar, thence S. 68° W. 42 p°, thence N. 10° W. 10 p° to a gum, thence N. 21° E. 160 p° to a poplar, thence E. 70 p° to a birch, thence N. 78° E. 250 p° to the beginning with its appurtenances.

Book 34, page 277.

Acres, 10050.

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Francis Deakins and Wm. Deakins, and their heirs forever.

In witness whereof, the said Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 2d day of June in the year of our Lord
769 one thousand seven hundred and 96, and of the Commonwealth the 20th.

ROBERT BROOKE.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Francis & Wm. Deakins. 10050 Acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 8. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

770 Fra's & Wm. Deakins, 10,050 Acres, Monongalia. Rec'd 28 Oct., '94. Grant Iss'd 2d June, 1796.

28th August 1794—Surveyed for Francis & William Deakins 10,050 acres of land in *Montgomery County by Virtue of the following Land Office Treasury Warrants, viz.—2000 acres No. 15,325 granted to Michael Ryan the 2d April 1783. 1000 acres No. 9431 granted to Z. Clark the 27th November 1781, 1380 acres part of Warrant of 2000 acres No. 15,311 granted to Michael Ryan 2d April, 1783—1800 acres part of Warrant of 3000 No. 434 granted to Elias Laughlan 20th May, 1791—1050 acres part of a warrant of 1250 acres No. 17,762 dated 21st July, 1783—1956 acres part of a Warrant of 2000 acres No. 18585 granted to George Puckett the

* Mistake of the Clerk in recording this survey.

13th August 1783—540 acres part of Warrant of 4000 acres No. 18961 granted to David Anderson 29th August, 1783—256 acres part of a Warrant of 5000 acres No. 19475 granted to French Strother 22 September 1783—56 acres part of a Warrant of 442 acres No. 14609 granted to D. Nowley the 4th of October 1783—and 12 acres part of a Warrant of 2635¾ acres No. 16742 granted to Yan Key Lipscomb 10th of June 1783 the whole of said warrants assigned to Francis and William Deakins and entered for them—bounded as follows, viz: Beginning at a white oak near the begining of Francis & William Deakins 529 acre tract and running thence with the last lines reversed S. 81. E. 320 poles to a red oak, thence S. 26. W. 78 poles to a white walnut & 2 chestnut trees, thence along a line of Stratsmans 500 acre S. 38. W. 432 poles to a white oak & locust & hickory the Begining of said tract also being the fourth corner of Henry Dis's 558 acre tract then with the 558 acre tract aforesaid S. 35 W. 68 poles to 2 sugar trees and a cherry tree. Thence S. 10 W. 140 poles to a sugar tree, hickory & lynn. thence S. 25 W. 154 poles to 3 sugar trees corner to Hogmiers 882 acre tract. Thence with it S. 55. W. 100 poles to a sugar tre and hickory thence S. 25 W. 70 poles to a cherry tree, thence S. 34 poles to 2 sugar trees and a birch, thence S. 30. W. 343 poles to a sugar tree, hickory & ash, thence S. 64. W. 52 poles to a maple and 2 hickories, thence S. 4 E. 116 poles to 2 sugar trees and a hickory, thence N. 75¼. E. 340 poles crossing a branch of Wolf Creek to a white oak, the Beginning of the aforesaid 882 acre tract thence N. 66 poles, thence S. 18. E. 100 poles, thence S. 18 W. 46 to a former survey of the
771 aforesaid Deakins' thence with a line thereof S. 40 W. 462 poles to a chestnut corner to Godfrey Staples 200 acre tract, Thence with said tract reverse N. 13, W. 91 poles to pointers, thence N. 64, W. 40 poles to a chestnut, thence leaving said tract N. 59 W. 206 poles, crossing Wolf Creek to 2 white oaks thence N. 32 W. 210 poles to a sugar tree corner to Francis & William Deakins' tract of 281 acres and with it reversed N. 42. E. 68 poles to a white walnut thence S. 55. E. 4 poles to 4 small dogwoods the 5th corner of Wiles 238 acre tract thence with said Wiles land reversed N. 35. E. 20 poles to 2 sugar trees & a hickory then N. 70. E. 64 poles to 2 sugar tres & a hickory N. 40 E. 154 poles to a white oak thence N. 14, E. 92 poles to a sugar tree thence N. 65, W. 102 poles to 2 sugar trees from one stump, the begining of said tract still with said tract reversed S. 38¼ W. 295 poles to a maple the beginning of said Deakinses 281 acre, thence with it reversed S. 72½ W. 185 crossing a branch of Salt Lick to a sugar tree, thence S. 22, W. 86 poles to 2 dogwoods and a hickory, thence S. 10 E. 65 poles to a poplar, thence East 172 poles crossing a branch of Wolf Creek to 2 small maples, thence S. 20. E. 31 poles to a chestnut, thence S. 50 E. 42 poles to a maple, thence East 14 poles to 2 hickories and a sugar tree thence N. 45. E. 25 poles to 2 ashes and a maple thence N. 10. W. 49 poles to a hickory thence N. 30, E. 35 poles to a maple thence N. 55. W. 39 poles to a hickory. thence N. 11. E. 52 poles to a sugar tree, thence S. 32, E. 210 poles to 2 white oaks thence S. 38, W. 374 poles thence W. 220 poles to a sugar tree corner to Wallace & Muirs tract of 617 acres

and with the lines of said tract reverse N. 65. W. 286 poles to a white oak and birch thence S. 42, W. 86 poles to a beech thence S. 8, W. 69 poles to a maple, thence S. 30 W. 121 poles to a birch the beginning of said tract also corner of said Deakines' 897 acre tract. Thence with the 3 following lines of said tract N. 10, E. 272 poles to a sugar tree thence N. 15 W. 100 poles to a maple, thence N. 28, W. 108 poles to the end of 162 poles in the last line of Deakins' 300 acre tract and with the said line reverse N. 78, E. 162 poles to a sugar tree the beginning of Wallace & Muirs 634 acre tract and with it reverse N. 75, E. 360 poles to a hickory thence North 200 poles to a poplar thence N. 60, W. 160 poles to a sugar tree thence S. 70, W. 122 poles to a sugar tree thence S. 45, E. 16 poles to a
772 poplar, thence S. 70 W. 96 poles to a locust thence S. 35, W. 60 poles to a poplar thence leaving said tract N. 370 poles to a white oak the last corner of said Deakins' tract of 82 acres, thence with said tract reversed S. 55, E. 60 poles to a red oak thence N. 60, E. 80 poles to a maple, thence N. 25, E. 40 poles to a white oak thence N. 27 W. 100 poles to a white oak then leaving said tract and running N. 72, E. 112 poles to a white oak at the end of 3d line of said Deakins' 141 acre tract then with it S. 70 E. 48 poles to a poplar thence N. 59, E. 30 poles to a poplar thence N. 42, E. 185 poles to a poplar the beginning of said tract, thence leaving said tract and running N. 84, E. 416 poles to a white oak at the end of the 7th line of the aforesaid Deakins' tract of 560 acre, thence with it reverse East 230 poles to a white oak thence N. 60, E. 80 poles to a maple thence N. 68, E. 180 poles to a beech thence N. 15 E. 68 poles to a maple, thence N. 54, W. 200 poles to a poplar, thence S. 68 W. 42 poles thence N. 10, W. 10 poles to a gum thence N. 21, E. 160 poles to a poplar thence East 70 poles to a birch thence N. 78, E. 250 poles to the beginning.

JOHN COMPTON,
Ass't to Samuel Hanway, S. M. C.

Book 29, page 304.
Acres, 10,050.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 5th day of October, 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 8. Survey.

773 Wyndham Robertson, Esquire, Lieut. Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 23d day of January, one thousand eight hundred and 33, by virtue of Land Office Treasury Warrant No. 2616 there is granted by the said

Commonwealth unto Jacob Thomas a certain Tract or parcel of Land, containing 100 Acres, situated in Preston County on a small drain running into Scrub Glade run along and adjoining the Pennsylvania and Maryland lines, bounded as follows, to wit: Beginning at a stone pile on the Pennsylvania line & supposed corner of the Maryland line & running thence with the Maryland line S. 160 p° to a stake & small Spanish oak, thence leaving said line & running W. 100 p° to a Stone Pile, thence N. 160 p° crossing a branch of Scrubby Glade Run to the Pennsylvania Line, thence with said line E. 100 p° to the beginning with its appurtenances.

Book 86, page 618.

Acres, 100.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jacob Thomas and his heirs forever.

In witness whereof, The said Wyndham Robertson, Esquire, Lieut. Governor of the Commonwealth of Virginia, hath hereunto [SEAL.] set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 18th day of January, in the year of our Lord one thousand 837, and of the Commonwealth the 61st.

——— ———.

774 LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

*This grant was not signed by the Governor.

R. L. GAINES.

(Endorsed:) Jacob Thomas. 100 Acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 9. Patent.

(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

775 Jacob Thomas, 100 Acres, Preston Co. Re'd Mar., 1833. G't Iss'd 18 Ja'y, 1837.

Surveyed for Jacob Thomas ass'ee of Buckner Fairfax who is ass'ee of Alexander King, who is ass'ee of David Holmes in part, 100 acres of Land in Preston on part of a Land Office Exchange Treasury Warrant of 2179 acres No. 2616 dated the 14th Dec'b. 1831, entered the 18th day of January 1832, on a small drain running into Scrub Glade run and *to* by along & adjoining the Pennsylvania Line and Maryland line & bounded as followeth to wit: Beginning at a Stone Pile on the Pennsylvania Line & supposed corner of the Maryland Line & running thence with the Maryland Line S. 160 p° to a Stake and small Spanish oak, thence leaving said line & running W. 100 p° to a Stone Pile, thence N. 160 p°

crossing a branch of Scrub by Glade Run to the Pennsylvania Line thence with s'd line E. 100 p° to the beginning.

Book T, page 200.

Acres, 100.

HORACE LUDINGTON,
Ass't to Buckner Fairfax, S. P. C.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of Office, this 5th Octo. 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 9. Survey.

776 David Campbell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 28th day of May, one thousand eight hundred and 38, by virtue of Land Office Treasury Warrant No. 12732, there is granted by the said Commonwealth unto Isaac James a certain Tract or parcel of Land, containing 220 Acres, situated in Preston County along the Maryland Line, bounded as follows—Beginning at a black oak in said line, and the beginning corner of a survey made for Daniel Guffy, thence with his first line S. 83° W. 40 p° to a Locust, thence S. 35° W. 40 p° to chesnut, S. 55° W. 122 p° to a line of a survey made for Peter Garbough & with the same S. 18° W. 12 p° to a red oak his corner, thence S. 105 p° to a chesnut, S. 67° E. 182 p° to a stake in said State line and with the same N. 295 p° to the beginning with its appurtenances.

Book 90, page 688.

Acres, 220.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Isaac James and his heirs forever.

In witness whereof, The said David Campbell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand, and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 28th day of November, in the year of our Lord one thousand 839, and of the Commonwealth the 64th.

DAVID CAMPBELL.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this first day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

777 (Endorsed:) Isaac James. 220 Acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 10. Patent. (Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

778 Isaac James, 220 Acres, Preston Co. G't Is'd 28 Novb., 1839.

May 28th, 1838. Surveyed for Isaac James ass'ee of Buckner Fairfax, D. Harrison & Elisha M. Hagan 220 acres of Land in Preston County on part of Land Office Treasury Warrant of 5000 acres No. 12732, dated the 24th November 1836, entered the 15th Dec'b. 1837. Lying along the Maryland Line & bounded as follows, to wit: Beginning at a black oak in said Line & the beginning corner of a survey made for Daniel Griffy, thence with his first line S. 83° W. 40 p° to a Locust, thence S. 35° W. 40 p° to a chesnut, S. 55° W. 122 p° to a Line of a survey made for Peter Garlough & with the same S. 18° W. 12 p° to a red oak his corner, thence S. 105 p° to a chesnut, S. 67° E. 182 p° to a stake in the said State line & with the same N. 295 p° to the Beginning.

Platted by 50 p° to Inch, Vari., 1° 20′.

JOHN ROYSE, *S. P. Co.*

Book V, page 508.
Acres, 220.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this office. Witness my hand and seal of Office this 5th of October, 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 10 Survey.

779 John Rutherfore, Esquire, Lieut. Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 15th day of Aug't, one thousand eight hundred and 40, by virtue of Land Office Treasury Warrant No. 12799 there is granted by the said Commonwealth unto Jacob Myers a certain Tract or parcel of Land, containing 84 Acres situate in Preston County in the North East corner & bounded as follows, Beginning at a double *sarvis*, corner to said Myers & standing on the Pennsylvania line, thence with said line W. 240 p° to a chesnut & 2 Rocks, thence S. 13° E. 112 p° to a white oak corner to said Myers & with his line N. 63° E. 240 p° to the beginning with its appurtenances.

Book 92, page 350.
Acres, 84.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Jacob Myers and his heirs forever.

In witness whereof, The said John Rutherford, Esquire, Governor

of the Commonwealth of Virginia, hath hereunto set his
[SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 30th day of October, in the year of our Lord one thousand 841, and of the Commonwealth the 66th.

JOHN RUTHERFORD.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 3d
780 day of October 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Jacob Myers. 84 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N No. 11. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

781 Jacob Myers, 84 Acres, Preston Co. Rec'd 20 Ap'l, 1841.
G't Iss'd 30th Octo., 1841.

August 15th, 1840 Surveyed for Jacob Myers ass'ee of John Royse 84 acres of Land in Preston County on part of a Land Office Treasury Warrant of 1000 acres No. 12,799 dated the 6th day of January 1837, entered the 3d day of Jan'y 1840 in the N. E. Corner..... of said County & Bounded as follows—Beginning at a double sarvis corner to said Myers & standing on the Pennsylvania Line, thence with said Line W. 240 p° to a chesnut & 2 red oaks, thence S. 13° E. 112 p° to a white oak, corner to said Myers and with his Line N. 63° E. 240 p° to the beginning.

JOHN ROYSE, *S. P. Co.*

Variation, 1° 15′.
Book W, page 369.
Acres, 84.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of office this 5th day of October 1892.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 11 Survey.

782 James McDowell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 28th day of May, one thousand eight hundred and 44, by virtue of Land Office Treasury Warrant No. 15180 there is granted by the said Commonwealth unto John Hoy a certain Tract or parcel of Land, containing 72 acres, lying and being in Preston County and bounded

as follows: Viz: Beginning at a large Maple and Pine on the bank of the North branch of the Potomac River, on the Maryland Line, thence N. 240 p° with the Maryland line, thence S. 59° W. 76 p° to 3 hemlocks, then S. 25° E. 28 p° to a pine tree, then S. 7½° E. 80 p° to 2 maples & beech S. 44° W. 22 p° to 2 maples, S. 25° E. 52 p° to a large maple and pine S. 49° E. 49 p° to the beginning with its appurtenances.

Book 96, page 117.

Acres, 72.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said John Hoy and his heirs forever.

In witness whereof, The said James McDowell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 31st day of December in the year of our Lord one thousand 844, and of the Commonwealth the 69th. [SEAL.]

JAMES McDOWELL.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 3d day of October, 1892.

W. R. GAINES,
Register of the Land Office. [SEAL.]

783 (Endorsed:) John Hoye. 72 Acres. Maryland *vs.* West Virginia. Defendant's Exhibit N No. 12. Patent.

(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

(Endorsed:) Office Supreme Court U. S. Filed Mar. 6, 1893. James H. McKenney, Clerk.

784 John Hoy, 72 Acres, Preston Co. Rec'd June, 1844. G't Iss'd Decb. 31, 1844.

May 28th, 1844. Surveyed for John Hoy 72 acres of Land in Preston County on a Land Warrant of 190 acres No. 15,180 dated the 16th day of Octo. 1843, entered the 3d day of April 1844. Beginning at a large Maple & Pine on the bank of the North branch of the Potomac River on the Maryland Line, thence N. 240 poles with the Maryland Line, then S. 59° W. 76 p° to 3 hemlocks, then S. 25° E. 28 p° to a pine tree, then S. 7½° E. 80 p° to 2 Maples & Beech, S. 44° W. 22 p° 2 Maples, S. 25° E. 52 p° to a large Maple and Pine, S. 49° E. 49 p° to the beginning. Platted by scale of 40 p° to Inch.

Variation 1° 30′ West.

R. MORRIS, *S. P. C.*

ADAM GONER,
JACOB GONER,
C. C.
JACOB GONER, *Marke.*

Book Y, page 493.
Acres, 72.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of office this 5th October, 1892.

W. R. GAINES, [SEAL.]
Register Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 12 Survey.

785 John B. Floyd, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 3d day of January, one thousand eight hundred and 50, by virtue of Land Office Treasury Warrant No. 2999 there is granted by the said Commonwealth unto Hillery Griffin & Frederick Wotering, s'd Wotering ass'ee of D. Mathews, a certain Tract or Parcel of Land, containing 200 acres, lying in Preston County on the head of the North branch of the Potomac, adjoining a survey made for John Hoye, and bounded as follows, viz: Beginning at 2 cucumbers, 2 beeches, a birch & Stone near Friends' path and South of Laurel Run, thence S. 48° W. 85 p° to a pine, W. 37 p° to a birch, S. 45° W. 34 p° to a pine, S. 49 p° to a pine, S. 60° E. 8 p° to Pointers, S. 10° W. 61 p° to Pointers, S. 15° E. 20 p° to a double Maple, S. 25° E. 47 p° to a Pine, S. 50 p° crossing the branch to an angle, E. 45 p° to an angle, N. 40° recrossing said branch to a cucumber on the bank of a drain, S. 20° W. 20 p° to Pointers, N. 50° E. 29 p° to a maple, S. 35° E. 37° p° to Pointers, E. 34 p° to Pointers, N. 22° E. 33 p° to a Pine, on the bank of a drain, N. 78° W. 23 p° to Pointers' corner to said Hoyes' 72 acres, thence with 5 lines of the same reversed, N. 25° W. 52 p° to Pointers, N. 44° W. 22 p° to a maple, N. 7½° W. 80 p° to Pointers, N. 25° W. 29 p° to a pine, N. 59° E. 10 p° to a double Lynn, then leaving said Hoye N. 32° W. 50 p° to the beginning with its appurtenances.

Book 106, page 113.

Acres, 200.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Hillery Griffin & Frederick Wotering and their heirs forever.

In witness whereof, The said John B. Floyd, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the first day of September in the year of our Lord one thousand 851, and of the Commonwealth the 76th.

JOHN B. FLOYD.

786 LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 3d day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Hillery Griffin & Co. 200 Acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 13. Patent.

787 Hillery Griffin and David Mathew, 200 Acres, Preston Co. Re'd Feb'y 19, 1851. Gt. is'd Sept. 1, 1857.

January 3d, 1850 Surveyed for Hillery Griffin & David Mathew ass'ee of R. Morris, who is ass'ee of Geo. Smith, Executor of John Hoye, dec'd 200 acres of Land in Preston County on a Land Office Exchange Treasury Warrant of 555 acres No. 2999, dated the 17th day of Sept. 1845, & entered the 2d of Jan'y 1850, on the head of the North branch of the Potomac adjoining a survey made for s'd Hoye & bounded as follows,—Beginning at 2 cucumbers. 2 beeches, a birch & Stone near Friends' path & south of Laurel Run, thence S. 48° W. 85 p° to a Pine, W. 37 p° to a birch, S. 45° W. 34 p° to a Pine, S. 49 p° to a Pine, S. 60° E. 8 p° to Pointers, S. 10° W. 61 p° S. 15° E. 20 p° to a double maple, S. 25° E. 47 p° to a Pine, S. 50 p° crossing the branch to an angle, E. 45 p° to an angle, N. 40 p° recrossing said branch to a cucumber on the bank *bank* of a drain, S. 20° W. 20 p° to Pointers, N. 50° E. 29 p° to a maple. S. 35° 37 p° to Pointers, E. 34 p° to Pointers, N. 22° E. 33 p° to a Pine on the bank of a drain, N. 78° W. 23 p° to Pointers, corner to said Hoye's 72 acres, thence with 5 lines of the same reversed N. 25° W. 52 p° to Pointers, N. 44° W. 22 p° to a maple, N. 7½° W. 80 p° to Pointers, N. 25° W. 29 p° to a Pine, N. 59° E. 10 p° to a double Lynn, thence leaving said Hoye N. 32° W. 50 p° to the beginning.

R. MORRIS, *S. P. C.*

788 I assign my interest to the within to Frederick Wotering.
DAVID MATHEW.

Feb'y 11th, 1851.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this office. Witness my hand and seal of office this 5th October, 1892.

Book E No. 2, page 11.
Acres, 200.

W. R. GAINES, [SEAL.]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 13. Survey.

789 Joseph Johnson, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 27th day of April, one thousand eight hundred and 53, by virtue of Land Office Treasury Warrants Nos. 17794 and 16483 there is granted by the said Commonwealth unto E. C. Wilson, John P. Byrne, & R. Morris a certain Tract or Parcel of Land containing 600 Acres, lying in Preston County on the head of Yough River, and the North branch of the Potomac, and adjoining the Maryland line, John Hays' 72 acres survey & Hillery Griffin's survey and bounded as follows, viz: Beginning at Pointers on the Maryland line and corner to John Hoys' dec'd 72 acres, thence with a line of the same S. 59° W. 66 p° to a double lynn, corner to Hillery Griffin, thence with 5 of his lines N. 32° W. 50 p° to 2 cucumbers, 2 beeches & a burch., the beginning of said Griffin's survey, thence S. 48° W. 85 p°to a Pine, W. 37 p° to a birch, S. 45° W. 34 p° to a pine, S. 26 p° to a stake in Elisha Bell's line, with the same N. 56° W. 168 p° to a birch & 2 chesnuts, N. 31½° E. 414 p° to a corner of F. W. Deakins' survey of 2000 acres, N. 6° W. 70 p°, E. 125 p° to the Maryland line, with the same S. 514 p° to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said E. C. Wilson, John P. Byrne, & R. Morris and their heirs forever.

In witness whereof, The said Joseph Johnson, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the first day of February in the year of our Lord one thousand 854, and of the Commonwealth the 78th.

[SEAL.]

JOSEPH JOHNSON.

790 LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 3d day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) E. C. Wilson & Co. 600 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 14. Patent.
Supreme Court U. S. No. 1, Original, Octo. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

791 E. C. Wilson & Co., 600 Acres, Putnam Co. Re'd July 26, 1853. G't Iss'd Feb'y 1, 1854.

April 27th, 1853. Surveyed for E. C. Wilson & John T. Byrne & R. Morris ass'ee of E. C. Wilson and also ass'ee of Buckner Fairfax 600 acres of Land in Preston County on the following warrants (S S)

500 acres on Land Office Treasury Warrant of 1000 acres No. 17,794 issued to Edgar C. Wilson 26th June 1849 & entered 20th September 1852 on the head of Yough River and the North branch of the Potomac and adjoining the Maryland line, John Hoys' 72 acres survey and Hillery Griffin's survey and 100 acres ass'ee of Buckner Fairfax on part of a Land Office Treasury Warrant of 1000 acres No. 16,487 dated 20th March 1847, entered 29 March 1853. Adjoining their other survey and bounded as follows, to wit: Beginning at Pointers on the Maryland Line and corner to John Hoy's dec'd (72 acres thence with a line of the same S. 59° W. 66 p° to a double Lynn, corner to Hillery Griffin, thence with 5 of his Lines N. 32° W. 50 p° to 2 cucumbers, 2 beeches & a beech (the beginning of said Griffin's survey) thence S. 48° W. 85 p° to Pine, W. 37 p° to a beech, S. 45° W. 34 p° to a pine, S. 26 p° to a stake in Elisha Beall's Line, with the same N. 56° W. 168 p° to a beech and
792 2 chesnuts, N. 31½° E. 414 p° to a corner of F. W. Deakins' survey of 2000 acres, N. 6° W. 70 p° E. 125 p° to the Maryland Line, with the same S. 514 p° to the Beginning.

R. MORRIS, *S. P. C.*

Vari., 6° 20′ W.
100 p° to inch.

PUTNAM COUNTY, *To wit:*

This day John P. Byrne personally appeared before the subscriber a Justice of the Peace in & for said County, & made oath that he verily believes that the Land embraced in the within survey was at the time of entry thereof liable to entry. Given under my hand this the 18th day of July, 1853.

JOHN S. MURDOCK, *J. P.*

Book F, No. 2, page 671.
Acres, 600.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this office. Witness my hand and seal of office this 5th of October, 1892.

W. R. GAINES, [SEAL]
Register of Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 14. Survey.

793 John Letcher, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 6th day of July, one thousand eight hundred and 59, by virtue of Land Office Treasury Warrant No. 23241 there is granted by the said Commonwealth unto Samuel Boger a certain Tract or parcel of Land, containing 157 Acres lying in Preston County adjoining and

between a late survey of 200 acres made for Wm. Ashby & The Maryland and Virginia Line and bounded as follows, viz: Beginning at a chesnut Stump and pointers, beginning corner to Wm. Ashby's late survey of 200 acres, thence N. 72° E. 12 p° to a Stone Pile in the State Line, thence with the same N. 451 p° to a Stone, thence S. 40 W. 222 p° to a pine in a line of said Ashby's survey of 200 acres, thence with the same reversed N. 73° E. 24 p° to a beech, Ashby's corner, S. 22° E. 288 p° to the beginning with its appurtenances.

Book 117, page 79.
Acres, 157.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Samuel Boger, and his heirs forever.

In witness whereof, The John Letcher, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand [SEAL.] and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the first day of May, in the year of our Lord one thousand 860 and of the Commonwealth the 84th.

JOHN LETCHER.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office, this 3d day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

794 (Endorsed:) Samuel Boger. 157 Acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 15. Patent.
(Endorsed:) Supreme Court U. S. No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

795 Sam'l Boger. 157 Acres. Preston Co. G't Iss'd May 1, 1860.

July 6th, 1859. Surveyed for Samuel Boger ass'ee of John Crane who was ass'ee of E. M. Hagan, 157 acres of Land in Preston County on part of a Land Office Treasury Warrant of 1990 acres No. 23,241, dated 25th Sep't, 1855, & entered 30th of June, 1859, adjoining & between a late survey of 200 acres made for William Ashby & the Md. & Va. Line & bounded as follows, to Wit: Beginning at a chesnut Stump and Pointers beginning corner to Wm. Ashby's late survey of 200 acres, thence N. 72° E. 12 p° to a stone pile in the State Line, thence with the same N. 451 p° to a stone, thence S. 40° W. 222 p° to a Pine in a line of said Ashby's survey of 200 acres, thence with the same reversed N. 73° E. 24 p° to a beech Ashby's corner, S. 22° E. 288 p° to the beginning.

GEORGE M. MICHAEL, *S. P. C.*

By 80 p° to Inch.
Var. 1° 15′ West.
Book 5, page 543.
Acres, 157.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this office. Witness my hand and seal of office, this 5th October, 1892.

W. R. GAINES, [SEAL.]
Register Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 15. Survey.

796 John Letcher, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, That in conformity with a survey made on the 11th day of September, one thousand eight hundred and 59, by virtue of Land Office Treasury Warrant, No. 23241, there is granted by the said Commonwealth unto Samuel Boger a certain Tract or parcel of Land, containing 80 Acres, lying in Preston County adjoining the Maryland line, Abraham Thomas, Hagan & Scott & John Fike, and bounded as follows, viz: Beginning at a white oak, corner to said Fike & Hagan & Scott, and running with 7 of Fike's lines reversed, S. 38° W. 66 p° to a black oak and stake, S. 6° E. 27 p° to 3 white oaks, S. 65° E. 70 p° to a white oak, E. 48 p° to a stake, S. 9° E. 154 p° to a Stone pile & pointers, E. 11 p° to a stone pile, N. 79° E. 8 p° to a stake in the Maryland line, thence with the same N. 154 p° to a stake in Abraham Thomas' line, with 2 of his lines W. 66 p° to Pointers, N. 120 p° to a stone pile corner to Hagan & Scott, with 2 of their lines reversed W. 38 p° to a stone Pile & Pointers, S. 60° W. 28 p° to the beginning with its appurtenances.

Book 117, page 78.

Acres, 80.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Samuel Boger and his heirs forever.

In witness whereof, The said John Letcher, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his [SEAL.] hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the first day of May, in the year of our Lord one thousand 860, and of the Commonwealth the 84th.

JOHN LETCHER.

797 LAND OFFICE, RICHMOND, VA.

I hereby certify that the fore-oing is a true copy from the records of this office. Witness my hand and seal of office, this 3d day of October, 1892.

W. R. GAINES, [SEAL.]
Register of the Land Office.

(Endorsed:) Samuel Boger. 80 acres. Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 16. Patent.

(Endorsed:) Supreme Court U. S., No. 1, Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

798 Sam'l Boger, 80 Acres, Preston Co. G't Iss'd 1 May, 1860.

Surveyed for Samuel Boger, ass'ee of John Crane who is ass'ee of E. M. Hagan, 80 acres of land in Preston County in part of a Land Office Treasury Warrant of 1990 acres, No. 23241 dated Sept. 10th, 1859, adjoining the Md. Line Abraham Thomas Hagan & Scott and John Fike and bounded as follows to Wit: Beginning at a White Oak, corner to said Fike, Hagan & Scott, and running 7 of Fike's Lines reversed S. 38° W. 66 p° to a black oak & stake, S. 6° E. 27 p° to 3 white oaks, S. 65° E. 70 p° to a white oak, E. 48 p° to a stake, S. 9° E. 154 p° to a stone pile and Pointers, E. 11 p° to a Stone Pile, N. 79° E. 8 p° to a stake in the Md. Line, thence with the same N. 154 p° to a stake in Abraham Thomas' line, with 2 of his Lines W. 66 p° to pointers, N. 120 p° to a stone Pile, corner to Hagan & Scott, with 2 of their lines reversed W. 38 p° to a Stone Pile, & Pointers, S. 60° W. 28 p° to the beginning.

GEO. M. MICHAEL, *S. P. Co.*

By scale, 100 p° to Inch.
Book 5, page 542.
Acres, 80.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true Copy from the Records of this Office. Witness my hand and seal of office this 5th October, 1892.

W. R. GAINES, [SEAL.]
Register Land Office.

(Endorsed:) Maryland *vs.* West Virginia. Defendant's Exhibit N. No. 16. Survey.

799 LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing is a true copy (without topography) of the Map of the "Boundary Line between Maryland and Virginia—Western Meridian Line—surveyed under the orders of the Joint Commission appointed in obedience *of* the Act of the General Assembly of Maryland of May 27th, 1852, and to the Act of the General Assembly of Virginia of March 26th, 1858. Thos. J. Lee, of Maryland—Angus W. McDonald of Virginia, Commissioners—By Lieut. N. Michler, U. S. Top'l Eng'r, assisted by John de la Camp and L. Daser—1859-60" on file in this office.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this sixth day of
[SEAL.] December eighteen hundred and ninety two.

PHILIP D. LAIRD,
Commissioner of the Land Office of Maryland.

STATE OF MARYLAND,
Anne Arundel County, set:

I, Charles B. Roberts, Chief Judge of the Fifth Judicial Circuit of the State of Maryland, do hereby certify that the aforegoing Attestation by Philip D. Laird Commissioner of the Land Office of the State of Maryland, is in due form.

Given under my hand this Sixth day of December eighteen hundred and ninety two.

CHARLES B. ROBERTS,
Chief Judge Fifth Judicial Circuit of the State of Maryland.

STATE OF MARYLAND,
Anne Arundel County, set:

I, Sprigg Harwood, Clerk of the Circuit Court for Anne
800 Arundel County do hereby certify that Charles B. Roberts, Esq., who signed the aforegoing Certificate of Attestation was, at the time of so doing, ever since hath been, and still is, Chief Judge of the Fifth Judicial District of the State of Maryland, duly commissioned and qualified; and that to all his acts as such due faith and credit is and ought to be given, as well in Courts of Justice as thereout.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the Seal of the Circuit Court for Anne Arundel County this Seventh day of December eighteen hundred and ninety two.

SPRIGG HARWOOD,
Clerk of the Circuit Court for Anne Arundel County.

801 THE STATE OF MARYLAND,
EXECUTIVE DEPARTMENT.

I, Frank Brown, Governor of Maryland and custodian of the Great Seal thereof, do hereby certify that Philip D. Laird, Esquire, was duly appointed and commissioned and has properly qualified as Commissioner of the Land Office and Keeper of the Chancery records of the State of Maryland; that the said office was established by the Constitution of the State and that his term of office will not expire until May, 1896—I further certify that his annexed certificate is in due form and that full faith and credit are due and ought to be given his Official Acts.

And I further certify that I verily believe that each of the signatures and seals attesting the said — are genuine.

Witness my hand and the Great Seal of Maryland.
[SEAL.] Done at the City of Annapolis on the seventh day of December, in the year of our Lord eighteen hundred and ninety.

FRANK BROWN.

By the Governor:

E. W. LC COMPTE,
Secretary of State.

(Here follow maps marked Exhibits O, P, & Q.)

[Endorsed on back of maps.]

16

Michler's Map.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT O.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

17

Map Made at Treaty of Peace, 1763.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT P.

Office Supreme Court, U. S. Filed M'ch 6, 1903. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

18

Mitchell's Map, 1750.

Maryland *vs.* West Virginia.

DEFENDANT'S EXHIBIT Q.

Office Supreme Court, U. S. Filed M'ch 6, 1893. James H. McKenney, Clerk.
Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Mar. 6, 1893.

802 (Endorsed:) Supreme Court U. S. October Term 1892. No. 6, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Answer and Exhibits. Filed March 6, 1893.

803 And afterwards, to wit, on the 15th day of May, A. D. 1893, the following entry appears of record, viz:

No. 6, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. A. H. Garland, in behalf of counsel, It is ordered by the court that the defendant be allowed until the first day of June, 1893, within which to file a cross bill herein, and that the complainant be allowed until the first Monday of October, 1893, within which to file its answer to such cross bill, and that the Clerk file same when received, as per stipulation of counsel.

804 And on the same day, to wit, on the 15th day of May, A. D. 1893, the stipulation as to filing cross bill and answer thereto was filed in the words and figures following, to wit:

805 In the Supreme Court of the United States.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

Agreement.

It is agreed, the Court consenting, that the time for filing the cross bill by the State of West Virginia against the State of Maryland, for the filing of which, leave has heretofore been granted by the Court, shall be extended until the first day of June, 1893. And that the State of Maryland shall have until the first Monday of October, 1893 for filing its answer to such cross Bill—and that the cross bill and the answer thereto shall be filed in the Clerk's office with the Clerk, instead of in open Court.

JOHN PRENTISS POE,
Attorney General of Maryland for the State of Maryland.
S. L. FLOURNOY,
Of Counsel for the State of West Virginia.

Ordered this 10th day of May, 1893, upon the aforegoing agreement that leave be granted to file the cross bill referred to therein and the answer to such cross bill in the mode and within the time stated in said agreement.

(Endorsed:) Supreme Court U. S., October Term, 1892. Term No. 6, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Stipulation postponing time of filing Cross-bill until June 1, and answer until the first Monday of October, 1893. Office, Supreme Court U. S. Filed May 15, 1893. James H. McKenney, Clerk.

806 And afterwards, to wit, on the 1st day of June, A. D. 1893, the cross bill of the defendant was filed in the words and figures following, viz:

807 To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of West Virginia respectfully showeth unto this Honorable Court that on the — day of ——, 1892, the State of Maryland filed in this Honorable Court her Bill of Complaint against the State of West Virginia, alleging that on the 20th day of June, 1632, Charles I, King of England, &c. granted unto Cecilius, Baron of Baltimore, a charter giving him dominion over the territories described in it, and made him Governor of the Colony afterwards planted there, with succession to his heirs-at-law, that under this charter, possession was taken by the grantee and jurisdiction exercised thereunder until the Revolution when Maryland became a sovereign State and a member of the American Union and all the rights, proprietary, as well as political previously granted under the charter became vested in the State of Maryland; that the boundaries of the province of Maryland as laid down in said charter are the fortieth parallel of north latitude, a meridian line running south to the first or most distant fountain of the Potomac (*ad verum meridianum primi fontis fluminis de Potowomack;*) thence proceeding southward (*deinde vergendo versus meridian*) to the further or western bank of that river and following that bank to a specified point at the mouth of the river where it debouches into the Chesapeake bay; thence by a straight line across the bay to Watkins point and onward to the ocean; and thence by the ocean and Delaware Bay and river to the fortieth parallel; that Maryland at the time of and after the Revolution claimed her western boundary under this charter, and that said claim has been to the south Branch of

808 the Potomac as the furthest source of the Potomac; and said Bill of Complaint further represented that the territory covered by the charter aforesaid on the western limits of the State of Maryland has been in part covered by grants from the States of Virginia and West Virginia; that West Virginia had assumed jurisdiction over some of the citizens of Maryland holding lands under grants from the said latter State; that many conflicts have arisen between the citizens of the two states over claims arising out of grants of the same lands by the respective states; that the State of West Virginia is wrongfully, unlawfully and unconstitutionally in possession of and exercising sovereign jurisdiction and control over a large portion of the territory which, under the constitution and laws of Maryland, the constitution and laws of West Virginia, and

under the constitution and laws of the United States, of right belongs to and is part of the territory of Maryland, and over which Maryland should rightfully exercise sovereign jurisdiction and control; that the true line of the western boundary of Maryland is a meridian line running south to the first or most distant fountain of the Potomac, and that such line is several miles south and west of the line which the state of West Virginia claims, and to which said state is attempting to exercise territorial jurisdiction; and that the State of West Virginia is in possession of and unlawfully exercising sovereign jurisdiction, authority and control over a strip of land several miles wide and within the territorial jurisdiction of the state of Maryland. And the State of Maryland in her said Bill of Complaint prayed that the State of West Virginia be made party defendant to said Bill, and that it be required to answer the allegations thereof, and that your Honors by proper orders and decrees, establish the true boundary line between the state of Maryland and the State of West Virginia at a meridian line running south from
809 the fortieth parallel of north latitude to the first or most distant fountain of the Potomac, in conformity with the ancient chartered rights of said State of Maryland, and the laws creating the State of West Virginia and admitting it into the Union; that the rights, jurisdiction and sovereignty of the State of Maryland to all the land and territory, with all its appurtenances now held and controlled by the State of West Virginia, lying within the line of the western boundary of the State of Maryland, by proper order and decree of this Honorable Court be restored and confirmed to the State of Maryland; that the State of Maryland be *quieted* in the full and free enjoyment of its jurisdiction and sovereignty over the same and that the title, jurisdiction and sovereignty of the State of Maryland over the said territory be confirmed and established by decree of this Court; and for general relief.

To this Bill of Complaint the State of West Virginia filed her answer on the 20th day of February, 1893, in which she denied that she is in possession of or exercising sovereign jurisdiction and control over any territory which of right belongs to or is a part of the territory of the State of Maryland, or over which the said State of Maryland should rightfully exercise sovereign jurisdiction and control; and asserted and insisted that the whole of the territory now in her possession, and over which she is now exercising sovereign jurisdiction and control is embraced within her own true, lawful and well established boundaries; and that the State of Maryland has no just or legal claim or right to the possession of or to the exercise of any jurisdiction or control over any part of said territory.

The said answer further shows that the State of West Virginia became one of the sovereign states of the Union on the 20th day
810 of June, 1863, having been formed out of a portion of the territory of the Commonwealth of Virginia, and that all the territory claimed by the State of Maryland and all the territorial rights and property in and jurisdiction over said territory which had theretofore been vested in and exercised by the Commonwealth of Virginia, was transferred to and became vested in the State of West

Virginia, and the State of West Virginia has ever since its creation been in undisturbed and exclusive possession of said territory, and has exercised sovereign jurisdiction and control over the same; that from the time when the Colony of Virginia was first founded up to the time when the State of West Virginia was created, the territory claimed by the State of Maryland in its said Bill of Complaint had been embraced within the territorial limits of said Colony of Virginia and of the Commonwealth of Virginia after the Revolution; and that said Colony and Commonwealth had exercised exclusive jurisdiction and control over the same.

The said answer set out the ancient charter of Virginia, as well as the charter of Maryland, and gave a detailed historical statement of the facts relating to the settlement and the boundaries of the two Colonies, and showed that the north branch of the Potomac River, instead of the south branch, had been established as the boundary line between Maryland and Virginia, and that the Fairfax stone had been planted at the head of said north branch as early as 1746, by order of the King of Great Britain in Council, as marking the head spring or first fountain of the Potomac River, and that Virginia had had possession of and had exercised exclusive jurisdiction and control over all the territories south of the said north branch, from that time down to the date of the formation of the State of West Virginia, and that West Virginia had had possession of the same, and
811 exercised exclusive jurisdiction and control over the said territory ever since her creation, to the present time; and also showed that according to the true and correct construction of the charter of Maryland, considered with reference to the topography of the country, the said north branch is her boundary line, and the head springs of said branch are the first fountain of the Potomac River, called for by the charter of Maryland. And said answer showed that the State of Maryland has, in various ways, since the year 1818, recognized and acknowledged the said North Branch to be her boundary line, and that the said Fairfax stone is a point in said boundary, and that ever since 1851 she had abandoned all claim to the territory lying south of said North Branch, and the State of West Virginia in her said answer pleaded and set up all these and other matters as a full and complete answer and defense to the claims of the State of Maryland to the said territory south of said north branch of the Potomac. All of which will more fully and at large appear by reference to said Bill and answer which are now on file in this Honorable Court.

The State of West Virginia now comes and files this her Cross Bill, and says that there is a controversy between her and the State of Maryland as to the true location of that boundary line between the two States which runs southward from the point of the intersection of the meridian of the first fountain of the Potomac River with the southern line of the State of Pennsylvania, and also as to the possession of and jurisdiction and control over the Potomac River so far as it extends between the two States.

The translation of the charter of Maryland, which is filed with the said answer of the State of West Virginia, describes the northern

and western boundary lines of the territory thereby granted, as follows:

812 "Going from the said estuary, called Delaware Bay, in a right line in the degree aforesaid (fortieth parallel of latitude) to the true meridian of the first source of the River of Pattowmack; thence tending downwards toward the south to the farther bank of the said river, and following it to where it faces the western and southern coast as far as to a certain place called Cinquak situate near the mouth of said river, where it discharges itself in to the forenamed bay of Chesopeake," &c.

The State of West Virginia submits that the true construction of said language is that the Fortieth should be followed westward from the Delaware Bay until it intersects the true meridian of the first source of the Potomac, that this point of intersection becomes a corner of the territory of Maryland. The line runs thence "tending downwards towards the south to the farthest bank of said river." The intention was not that this line should follow said meridian to the first source of the Potomac. Because, as has been shown in said answer, at the time the Maryland charter was granted, it was not known whether the source of the Potomac was north or south of the fortieth parallel, but it was believed to be north of it. Hence the charter provided that the line from the point of intersection of said parallel and meridian, should "tend downwards towards the south to the farther bank of said river." The line could not run southward because the 40th was the southern boundary line of the New England Colony. The true construction of said language therefore is that said line should run from said point of intersection of the said parallel and meridian southward to the nearest point on the north branch of the Potomac River. And this point, the State of West Virginia insists, is at or near the mouth of Savage river or the town of Piedmont. And that a line so run is the true western boundary line of the State of Maryland.

813 But the State of Maryland, shortly after the Revolutionary war, in laying out lots for bounty for her Revolutionary soldiers attempted to extend her boundaries beyond the line above indicated as far as to the line running north from the Fairfax stone at the head of the North Branch to the Pennsylvania line—in other words, to the line of the meridian of the first fountain of the said north branch.

It appears that during the Revolutionary war the State of Maryland by various acts of her General Assembly, agreed to give bounties of 50 acres of land each to her soldiers in said war. And by an act of 1781, chapter 20, all the lands within the state in Washington county, westward of Fort Cumberland, with certain exceptions specified therein, were appropriated to discharge the engagement of land theretofore made to the officers and soldiers of said state, and the residue to the use of the public, as the General Assembly should thereafter direct.

And by a resolution adopted by the General Assembly of Maryland at its April session 1787, the Governor and Council was authorized to appoint and employ some skillful person to lay out the manors and such parts of the reserve and vacant land belonging to the

State, lying to the westward of Fort Cumberland, as he might think fit and capable of being settled and improved, into lots of 50 acres.

Francis Deakins Survey of Military Lots.

In 1788 the General Assembly of Maryland passed an Act (Act 1788, chapter 44) reciting the above mentioned Acts and resolution and the appointment of Francis Deakins, and that said Deakins had finished the said survey and returned a general plat of the country westward of Fort Cumberland, on which 4165 lots of 50 acres each are laid off besides sundry tracts which have been patented, distinguishing on the plat those lots which have been settled and
814 improved from those which remain uncultivated; that said Francis Deakins had returned two books entitled A and B, in which are entered certificates of all the lots before mentioned; that 636 of said lots had been settled and improved by settlers; that there were about 2475 soldiers entitled to said bounty and that about 100 lots ought to be set apart for the recruiting officers; therefore enacted that 2575 of the aforesaid lots lying in the most fertile part of the country and contained in the following limits, to-wit: Beginning at the mouth of Savage River and running with the North Branch of the Potomac River to the head thereof, then with the present supposed boundary line of Maryland until the intersection of an east line to be drawn from said boundary line with a north course from the mouth of Savage River, will include the number of lots aforesaid to be distributed by lot among the said soldiers and recruiting officers and their legal representatives, &c. And also "That the lots so granted to the officers aforesaid shall be adjacent to those hereinafter directed to be distributed to the soldiers and shall be contained within the following limits, to-wit: By extending the aforesaid north course from the mouth of Savage River until its intersection with an east line to be drawn from the aforesaid supposed boundary line of Maryland will include the necessary number allowing to each officer or representative four lots as aforesaid."

And also further enacted that any of the said lots not therein appropriated should be liable to be taken up in the usual manner by warrants, etc.

Said Act further provides that said general plat and books of certificates be lodged in the land office, and that said book of certificates of the 4165 lots aforesaid be considered to all intents and purposes as record books of the land office.

815 *Deakins' Map, &c.*

A duly certified copy of said map is filed as part of the said answer of West Virginia, marked defendant's Exhibit "H," and also copies of the courses and distances of all the lots in said map which adjoin the line drawn from the Fairfax stone to the Pennsylvania line, marked defendant's Exhibit "I," and the State of West Virginia asks that they may be considered as part of this Cross Bill. The said

Francis Deakins was directed to lay out all the lands in Maryland lying west of Fort Cumberland, and in doing so he ran a due north line from the Fairfax stone to the Pennsylvania line and laid out the lots as far westward as this line but no farther. It will be seen that the boundaries of the lots, the courses and distances of which are filed herewith as above stated, all call for a due north line. This is the line from the Fairfax stone to the Pennsylvania line.

Under this Act these military lots, as they have been ever since called, were allotted and granted to the Maryland soldiers, and those not so allotted were granted by the State of Maryland in the usual manner, by warrants, etc. The soldiers and others, grantees of these lots, took possession of them as they were laid out, and held them only up to said north line, as run by said Deakins.

The State of Maryland prior to the running of said Deakins line had made some few grants of land which extended westward of said line as run by Deakins. But after said Deakins line was run and established the State of Maryland never made any more grants of land lying west of said line. But before said Deakins run the said north line it had been run by Virginia surveyors in locating land warrants issued by the State of Virginia, and a number of patents had been issued by Virginia for lands lying west of said north line calling for natural objects in the Maryland line,
816 and after said Deakins line was run the said State of Virginia continued to issue patents for the vacant lands lying just west of and adjoining said Deakins line calling for natural objects in said line until the whole of the territory lying west of and adjacent of said line was taken up and patented by the State of Virginia. And the patentees of said lands claiming under said Virginia patents and those claiming under them, have ever since claimed and held possession of the lands granted to them respectively up to said Deakins line as the true boundary line between Maryland, Virginia and West Virginia. And in this way the said Deakins line came to be adopted and recognized by the inhabitants and land owners along the same as the state boundary line and as the limits of their land. No controversies arose between the holders of the Maryland military lots as laid out by Francis Deakins and the said Virginia patentees except in some instances as to the true location of the Deakins line.

The only other controversies that remained after said Deakins line was run were such as arose between persons holding under some old patents issued by Maryland prior to the running of Deakins line for lands lying west of said line, and persons claiming under patents issued by Virginia for the same lands. But these were few in number and limited in the amount of land involved.

List of Virginia Patents.

The land records of Preston County, West Virginia were destroyed by fire some years ago, and in the limited time allowed for the filing of her said answer, the state of West Virginia was unable to procure copies of all the patents issued by the State of Virginia for lands

lying along the said boundary line; but she filed with said answer sixteen of said patents, as part of said answer marked de-
817 fendant's Exhibit "N," numbers one to sixteen respectively together with a list of the same giving the names of the patentees, the quantity of the land granted by each patent, and the dates of the surveys and of the patents, endorsed, "List of patents along the boundary line," marked defendant's Exhibit "N," which she prays may be considered as part of this Cross Bill. And if it becomes necessary and proper, she will procure and file copies of other patents and surveys made under the authority of Virginia for lands lying along the said line.

Among others who received patents from the State of Virginia for lands lying west of and adjacent to said Deakins line, shortly after said Deakins line was run, was the same Francis Deakins who ran and established said line under the authority of the State of Maryland, as appears by several patents to him and to his brother, William Deakins, filed herewith and mentioned in the list filed herewith as above stated.

Possession Under Virginia Patents.

The said Virginia patentees took possession of and held the lands granted to them respectively by said estate, claiming and holding up said Deakins line from the date of their respective patents up to the present time. They acknowledged allegiance to the Governments of Virginia and West Virginia, paid taxes on said lands to said states and voted for officers of the said state Governments. A large quantity of the lands lying immediately west of said Deakins line, have been improved and settled upon by the grantees of Virginia, in some instances for nearly if not more than 100 years, and in other instances for a less period of time, but long beyond the period of limitation, or prescription recognized and enforced by the laws of the states of Maryland and of Virginia or West Virginia. *Marks on Deakins line obliterated.*

818 In the course of time the marks on Deakins line became obliterated and destroyed and the true location of the line was lost, and unknown in many places. On the 27th day of March, 1852, the Legislature of Maryland passed the following Act (Acts 1852, chapter 275): "Whereas, It is of great importance that the western territorial limit of the State of Maryland be clearly defined and her boundary be permanently established; and, whereas, the true location of the western line of Maryland, between the states of Maryland and Virginia beginning at or near the Fairfax stone on the north branch of the Potomac River, at or near its source, and running in a due north line to the State of Pennsylvania, is now lost and unknown, and all the marks have been destroyed by time or otherwise; and whereas, the states of Virginia and Maryland have both granted patents to the same tracts of land at or near the supposed line, and as suits of ejectment are now pending in the Circuit Court of Alleghany County in the State of Maryland by persons

holding under Maryland patents against persons now in possession and holding land under patents granted by the state of Virginia, which cannot be justly settled without establishing said boundary line;

"Therefore, SECTION 1. Be it enacted by the General Assembly of Maryland, that the Governor be and he is requested to open a correspondence with the Governor of Virginia in relation to tracing, establishing and marking the said line, and in case the legislature of Virginia shall pass an Act providing for the appointment of a commissioner to act in conjunction with the commissioner on the part of Maryland in the premises, then in such case, the Governor be and he is hereby authorized and requested to appoint a commissioner who, together with the commissioner who shall be appointed on the part of Virginia, shall cause the said line to be accurately surveyed, traced and marked with suitable monuments, be-
819 ginning therefor at the said Fairfax stone and running thence due north to the line of the state of Pennsylvania.

SECTION 2. And be it enacted that it shall be the joint duty of commissioners, after running, locating and establishing and marking said line, to make a report setting forth all the facts touching, locating and marking said line; and it shall be the duty of the commissioner of each respective state to forward copies of the joint report to each of their respective legislatures and upon the ratification of such report by the state of Virginia and the state of Maryland, through their respective legislatures, the said boundary line shall be fixed and established so to remain forever, unless changed by mutual consent of the two states."

At the same session a similar act was passed by the Maryland Legislature in relation to the southern boundary of that state.

Virginia Act of 1854.

On the 3rd of March, 1854, the General Assembly of Virginia passed the following act (Acts 1854, chapter 1):

"Whereas, the general Assembly of Maryland has passed an Act for running and marking the boundary line between that State and the State of Virginia, beginning therefor at the Fairfax stone on the Potomac River, sometimes called the North Branch of the Potomac River, at or near the source, and running thence due north to the line of the State of Pennsylvania; and whereas the legislature of Maryland has requested the appointment of a commissioner on the part of this state to act in conjunction with the commissioner of Maryland to run and mark said line; therefore be it enacted,

1st. That the Governor appoint a commissioner who together with the Maryland commissioner shall cause the said line to be
820 accurately surveyed, traced and marked with suitable monuments, beginning therefor at the Fairfax stone, situated as aforesaid, and running thence due north to the line of the State of Pennsylvania."

Said Act then directs the commissioners after running, locating, establishing and marking the said line, to make a report setting forth

all the facts touching the same to their respective legislatures, and then provides that:

"Upon the ratification of such report by the legislatures of the States of Virginia and Maryland the said boundary line shall be fixed and established to remain forever unless changed by mutual consent of the said states."

Appointment of Commissioners Lee & McDonald.

Under these acts the Governor of Maryland appointed Thomas J. Lee, commissioner on the part of Maryland, and the Governor of Virginia appointed Angus McDonald, commissioner on the part of Virginia.

These commissioners, Lee and McDonald, met at Washington City, Aug. 18, 1858, and applied to the Secretary of War for the services of an officer of the United States Engineers to aid them in the discharge of their duties. The Secretary promptly detailed Lieutenant N. Michler of the U. S. Topographical Engineers for that purpose.

The commissioners, with Lieutenant Michler, met at New Creek in Virginia, now Keyser, West Virginia and proceeded thence to the Fairfax stone, which was reached and easily recognized on the 19th of September, 1858.

Michler's Line Run.

Lieut. Michler was first assigned to work on the southern boundary line, and it was not until June 1859 that he began surveying
821 the line from the Fairfax stone to the Pennsylvania line.

The work was prosecuted during the remainder of that year, and on the 20th of December, 1859, Lieut. Michler made a report of the work done to said commissioners; and thereupon the commissioners made a joint report to legislatures of their respective states, transmitting therewith said report of Lieut. Michler with the maps made by him and the correspondence between said commissioners. This report and documents, together with a message of Gov. Wise of Virginia, prepared before the expiration of his term of office, was transmitted to the legislature of Virginia by Gov. Letcher on the 9th of January, 1860, and the whole is filed as part of the said answer as the same was afterwards published in pamphlet form marked defendant's Exhibit "J", and the following named parts of the same *is* desired to be taken as part of this Cross Bill, viz: the messages of Governors Letcher and Wise, pages 3 to 7, inclusive, joint report, pages 8 and 9, the instructions to Lieut. Michler on page 13; Lieut. Michler's report, pages 15 and down to — on page 16, then from — on page 25, to the conclusion of the report page 31. It appears from said message of Gov. Wise that commissioner McDonald made a special separate report in addition to the joint report required by both commissioners, but the State of West Virginia says she has not been able to find said report or any copy of it.

The State of West Virginia also filed as part of the said answer,

marked defendant's Exhibit "K", a duly certified copy of a book prepared by Commissioner Lee, which is now in the Land Office of Maryland, containing the correspondence between him and Mr. McDonald, and certain letters of his to the Governor of Maryland concerning the boundary question; and she asks that the same may be considered as part of this Cross Bill.

822 *Commissioners Disagree.*

It will appear from the above mentioned message of Gov. Wise, and from the said correspondence between the commissioners, that they differed as to the powers and duties imposed on them by the Acts of Legislatures under which they were appointed. Mr. Lee contended that they "were simply directed to retrace and mark certain boundary lines named in the Acts" under which they were appointed, and that the Virginia Act of March 26th, 1858, establishing the commission, acknowledged and adopted the meridian line from the Fairfax stone to the southern line of Pennsylvania as the boundary line between the two states.

Mr. McDonald contended that the commissioners were authorized to ascertain the true boundaries, and were not bound by the lines specified in the Act. And he claimed that the charter of Maryland required the meridian line to be run in order to obtain a starting point in the fortieth parallel of latitude, and that the boundary line was not to follow from said starting point the said meridian line, but to diverge southeastward until it struck the Potomac River proper—that is at some point where it had become a river—which point he claimed would be about the town of Piedmont.

McDonald Sent to England.

Owing to this difference in view the legislature of Virginia took no action on the report of said commissioners, but did adopt a resolution under which Mr. McDonald was commissioned to *to* go to England to procure documentary and other evidence to establish the true boundary between Virginia and the State of Maryland. Mr. McDonald sailed for England in June, 1860, and after that never acted any further in conjunction with Mr. Lee in locating,
tracing and marking either the western or southern boun-
823 dary line of Maryland. Mr. McDonald procured a large amount of documentary evidence on these boundary questions, and subsequently made a report and returned this evidence to the Governor of Virginia, but nearly if not all of it has been lost or was destroyed during the late war, and cannot now be obtained.

Maryland Adopts the Michler Line.

On the 5th of March, 1860, the Legislature of Maryland passed "An Act for the establishment of the southeastern and northwestern boundary line between this state and Virginia and making further appropriations to complete the survey and marking of the

same." (See Acts 1860, chapter 385.) Said Act is as follows, so far as it relates to the western boundary:

SECTION 2. And be it further enacted, "That the northwestern line of this state, is a line commencing at the Fairfax stone, at the head of the North Branch of the Potomac River, and running thence due north to the southern line of Pennsylvania, as surveyed in the year 1859 by the commissioners appointed by the states of Maryland and Virginia, in conformity with the laws passed by the said states for that purpose."

Section 3, appropriated $10,000 "For the payment of the states' proportion of such expenses as may be required to complete the survey and record of said line," &c.

Michler Line Marked by Maryland.

Mr. Lee, as commissioner of the state of Maryland, in the summer of 1860, employed two surveying parties "to continue the tracing of the line between the points determined astronomically by Lieut. Michler," &c., and "to mark the line at every prominent point, and on an average about every half mile, &c. And in August of that year he reported to the Governor of Mary-
824 land that the work was about completed. (See the correspondence of Commissioner Lee, a copy of which is filed with said answer, as Exhibit "K.") And the state of West Virginia also filed as part of her said answer a copy of the map made by Lieut. Michler marked defendant's Exhibit "O." And in the message of Gov. Hicks of Maryland to the Legislature at the January session 1862 he says:

"Report of the commissioner on the part of Maryland to ascertain and define the southeastern and northwestern boundaries between Maryland and Virginia are herewith submitted. I am informed by the commissioner that the tracing and marking of the western line of the State from the Fairfax stone to the northern boundary of Maryland was completed during the summer of 1860. The work was commenced in 1859, with the co-operation of Virginia in conformity with chapter 275 of the Acts of 1852. The commissioner of Virginia failed to join in the completion of the survey, but it being a matter of great importance to Alleghany county that it should be no longer delayed, the commissioner for Maryland completed the work, as required by chapter 385 of the Acts of 1860." (See Senate Journal and Documents of Maryland, 1861-2.)

Mr. Lee in his letter to Mr. McDonald, May 8, 1860, says:

"In the act of 1852 in relation to tracing and marking the western line, Maryland yielded, as she has unfortunately too often done, the point at issue between the commissioners of 1818."

Difference Between Michler's and Deakins' Lines.

The report of Lieut. Michler shows that the meridian line run by him strikes the Pennsylvania line about three quarters of a mile

west of the old line run by Francis Deakins, which he says
825 is that "generally adopted by the inhabitants as a boundary line," and he further says that if his line "is adopted it will cause great litigation as the patents of the lands called for the boundary as their limits."

Maryland's Claims to Michler Line.

It will thus be seen that between the Michler line of 1859 and the Deakins line of 1788 there is a triangular shaped strip of land having its apex at the Fairfax stone and its base three quarters of a mile in length on the Pennsylvania line and an altitude of 37 miles. The State of Virginia has granted patents for the lands on the west of the old Deakins line and those claiming under these old Virginia patents have held up to said Deakins line. After the Michler line was run and marked the citizens of Maryland began to claim the right in some instances to extend their holdings up to the Michler line, and in others to take up the land between said Deakins and Michler line. This has led to many disputes, and to some serious conflicts and litigation, as Lieut. Michler predicted it would.

Michler's Map Filed.

A copy of the map made by Lieut. Michler of the line run by him in 1859 was also filed as part of said answer marked defendant's Exhibit "O," on which the terminus of the old Deakins line on the Pennsylvania line is shown; and the State of West Virginia prays that the same may be considered as part of this Cross Bill.

Old Line Was to be Re-traced.

The State of West Virginia submits that these acts did not contemplate that a new line should be run different from that which had been formerly run and adopted, but that the former
826 line which said Act recited was then lost and unknown should be found, retraced and marked with suitable monuments. If said old line could be found it was simply to be "traced" and marked. It was believed to be a due north line, and it was known that it had been originally run as such, hence the commissioners were directed to run "due north to the line of the state of Pennsylvania" this being merely descriptive of the old line, it was evidently not intended that the line should be changed, in case it was found to vary slightly from a due north course by reason of a small variation of the compass or slight inaccuracy of instrument.

Deakins' Line the True Boundary Line.

Lieutenant Michler found the terminus of the old line on the Pennsylvania line about three quarters of a mile east of the point where the line run by him struck said Pennsylvania line.

The duty of the Commissioners under said Acts clearly was to have had said old line retraced from the Fairfax stone to the point where Michler found the terminus on the Pennsylvania line. If this had been done, the "great litigation" which Michler predicted would follow the adoption of the line run by him, would have been avoided, and the intention of the legislatures of both Maryland and Virginia would have been carried out, and exact justice done in the premises.

And the State of West Virginia insists that the rights which had been acquired by Virginia and by this state, and by the patentees of Virginia, to the land lying along the west side of said Deakins line, by their long continued possession and exercise of ownership over the same, and by the exercise of jurisdiction over the said territory by the state of Virginia, could not be and were not divested
827 or interfered with by the running and marking of said Michler line in 1859. And she says that none of said rights have been relinquished or abandoned, or become divested by any thing that has been done since said Michler line was run. And she avers that said old Deakins line is a true boundary line between said states, and prays that it may be so declared and established by this Honorable Court in this case.

The State of West Virginia does not admit that the old Deakins line was not correctly run nor that it does not follow a due north course. Nor does she admit that the said Michler line does follow a due north course. But she says that the said Deakins line was run as a due north line, and had been so regarded and recognized both by the state of Maryland and Virginia and by the citizens of said States for more than half a century before the said Michler line was run, and the state of West Virginia pleads and claims that the long continued exercise of jurisdiction by the State of Virginia up to said line, and the possession for said long period of her grantees of said territory have vested in this state as the successor of Virginia, and in said patentees of Virginia, and those claiming under them, full and complete title to said lands west of said Deakins line, and constitute a complete and valid defence to any claim of the state of Maryland to the same.

The state of West Virginia says that the Commonwealth of Virginia by accepting said Deakins line in 1787, as the boundary line between her and Maryland, gave up much valuable territory, viz: All that territory lying between said Deakins line and a line running from the point of intersection of the meridian running north from the Fairfax stone to the Pennsylvania line, with the said line of Pennsylvania to the nearest point in the Potomac River, which is at or near Piedmont. And she is advised that said Deakins
828 line having been accepted under such circumstances and acquiesced in by both states for so long a time cannot now be disturbed, even if it should be made to appear that said Deakins line varies slightly from a due north course, such variation, if it exists, not having been made intentionally, but by reason of a miscalculation of the variation of the magnetic needle, or on account of the instruments used by said Deakins not having been as strictly

accurate as the progress of modern science enables us to make such instruments now.

North Bank of the Potomac the Boundary Line.

The state of West Virginia further complaining says that the true northern boundary line between her and the state of Maryland is the left of or northern shore of the Potomac River at low water mark, for the whole extent of that shore coterminous between Maryland and West Virginia, that is to say, beginning on the division line between the states of Virginia and West Virginia at or near Harpers Ferry, at low water mark on the left or northern shore of the Potomac River, and following said shore to the Fairfax stone at the head spring of said river.

The State of Maryland claims that the said Potomac River to the right or southern shore at low water mark is within her territory and jurisdiction, and disputes the said claim of the state of West Virginia.

The compact made between Virginia and Maryland at Mount Vernon in 1785, mentioned in said answer, simply provided for the exercise of certain privileges and rights of navigation and fishing in said river and for the service of process upon same, and the punishment of crimes committed thereon, &c., but did not settle the question as to which state said river belonged, nor as to where the true boundary line between said *said* states along said river is located, and said question remains unsettled till this day.

829 The State of West Virginia bases her claim that said river is within her territory and should be subject to her exclusive jurisdiction and control, upon the following considerations:

Potomac Thought to Extend Above Forty Degrees.

First. It was manifestly the opinion and belief of the King when he granted the charter of Maryland to Lord Baltimore in 1632 that the first fountain or head spring of the Potomac River was north of the fortieth parallel of north latitude, and consequently that a meridian line drawn through said head spring would run west of said river, and that the fortieth parallel of latitude would have to cross said river to intersect said meridian line. Hence he provided in said charter that the line from the point of intersection of said parallel and meridian should tend southward to the farther bank of said river. In that case the farther bank of said river from said point of intersection would have been the northern bank. It was believed that said river continued in a northwesterly course. Neither the King nor any one else connected with said matter had any idea that said river made a bend to the southward as was discovered nearly a century later It will be remembered that even as late as 1736 in the instruction given to the surveyors of the King who were to survey Lord Fairfax's grant, said surveyors were especially charged to take observation and note where the Potomac river crossed the fortieth parallel of north latitude.

The charter will be construed in the light of the knowledge of the parties to it at the time it was granted, as this is the only way by which their intention can be carried out.

830 *Potomac River Granted to Lord Hopton and Others.*

That King Charles the second understood that the Potomac River was not granted to Lord Baltimore by his father, Charles I. and that he believed said river belonged to his royal province of Virginia, is clearly shown by his grant of the Northern Neck of Virginia, first in 1649, and afterwards confirmed in 1663 to the Earl of St. Albans and others. By his said patent and the subsequent confirmation thereof he granted,

"All that entire tract, territory or parcel of land, situate, lying and being in America, and bounded by and within the head of the rivers Tappahanock or Rappahannock, and Quiriough or Pottowmack Rivers, the courses of the said rivers as they are commonly called or known by the inhabitants and description of those parts and Chesapeake bay together with the rivers themselves and all the islands within the banks of those rivers. And all woods, &c."

Here is a distinct grant of the Potomac River and all the islands within its banks to the Earl of St. Albans and others, by the King, and in this grant these grantees and the inhabitants in the territory granted were to be and remain "in all things subject and obedient to such laws and constitution as are or shall be made by the said Governor, Council and Assembly" of Virginia.

These charters were always granted after reference to and recommendation by the Council or the Lords Committee of Plantations. There had been a bitter controversy between Lord Baltimore and the authorities of Virginia in regard to his charter and to the limits of his territory, especially on the lower Potomac and across the bay, ever since said charter was granted, and this controversy had been before the King and Council in various ways, and it cannot
831 be doubted that the whole matter as to whether the Potomac River was within said charter limits, was fully discussed, and therefore that King Charles II. in granting the Potomac River to the Earl of St. Albans and others, acted upon full information and advisedly.

Upon this point the state of West Virginia refers to the various papers and documents published in the "Report and the accompanying documents of the Virginia Commissioners appointed to ascertain the boundary line between Maryland and Virginia 1873" from page 73 to 162 inclusive, which is filed as part of the said answer, marked defendant's Exhibit "A".

Treaty of Peace of 1763. *Map Filed.*

Again, by the treaty of peace between Great Britain and France, at Paris, concluded on the 10th day of February, 1763, the boundaries of the various provinces of the respective sovereignties in America, were fixed and determined. Mr. De Jarnette, who was sent

to England by the State of Virginia, in the year 1872, to procure documentary evidence to be used in the controversy with Maryland, regarding the southern boundary, procured a photograph copy of a section of the English maps made under that treaty, "By Eman Bowen, Geographer to his Majesty, and John Gibson, Engraver," This map contains a number of the articles of said treaty printed on its face.

And state of West Virginia filed as part of her said answer one of the copies of said map, marked defendant's Exhibit "P", procured by Mr. DeJarnette as aforesaid, which she asks may be considered as part of this Cross Bill. Its title is:

"An accurate map of North America, describing and distinguishing the British and Spanish dominions on the great con-
832 tinent, according to the definitive treaty, concluded at Paris 10th February 1763. Also all of the West India Islands belonging to and possessed by the several European Princes and States. The whole laid down according to the latest and most authentic improvements."

On the face of this map there is the following inscription:

"The limits of his Majestys several provinces are here laid down as they at present exercise their jurisdiction. But the limits of the Massachusetts province with New York, New York with New Jersey, Connecticut with New York and Pennsylvania with Maryland are not yet fully determined. Nor is the boundary of North Carolina and of South Carolina yet settled, or of South Carolina and Georgia."

But the boundary between Maryland and Virginia was settled, and an inspection of this map will show that the boundary line between these provinces is distinctly laid down on the left or northern bank of the Potomac River. This was done by the authority of Great Britain exercising the treaty making power. It cannot be claimed that Great Britain did not know the boundaries of her Colonies, and especially must she be held to have been acquainted with the boundaries of these two of her oldest Colonies, between which there had been so much controversy, and discussion as to their true boundaries before the King and Council and the Lords Commit-ee of Trade and Foreign Plantation. Besides, it was a matter of great importance that in this important treaty with France the boundaries of these provinces should be announced and determined. All the provinces varied from each other in many particulars of the regulations of commerce and trade and navigation. The vessels of France required information as to parts of what provinces they entered and what regulation they were to observe.
833 It was especially important that it should be known which province had jurisdiction and control over so important and navigable river as the Potomac. And so it is here definitely determined and announced to the world that this great river, this commercial highway, belonged to and was under the dominion, jurisdiction and control of the colony of Virginia. That the treaty making power of Great Britain had the power to make such determination, even had it been unsettled before, cannot be questioned.

But this was strictly in accordance with the understanding which

the crown of Great Britain and its foreign office from the first had of this matter, and with the action of Charles II. in making the grant of the Northern Neck of Virginia, and it is also worthy of notice that this treaty was made not very many years after the survey and settlement of the boundaries of said Northern Neck as set forth in said answer.

Mitchell's Map.

The state of West Virginia also filed as part of her said answer, marked defendant's Exhibit "Q", a photographic copy of "a map of the British and French dominion in North America, with the roads, distances, limits and extent of the settlements, humbly inscribed to the Right Honorable Earl of Halifax, and the other Right Honorable The Lords Commissioners for Trade and Plantations by their Lordships most obliged and very humble servant, John Mitchell," which she asks may be considered as part of this Cross Bill. This copy of this map was also procured by Mr. DeJarnette with other documents upon his said visit to England. On the face of the map there appears this inscription:

"This map was undertaken with the approbation and at the request of the Lords Commissioners for Trade and Plantations and is chiefly composed from draughts, charts and actual surveys
834 of different parts of his majesty's colonies and plantations in America, a great part of which have lately been taken by their lordship's orders and transmitted to this office by the Governor of said Colonies and others.

JOHN POWNALL, *Secretary.*"

Plantation Office, Jan. 13, 1735.

There is also the following note on the face of said map:

"The bounds of Pennsylvania and Maryland and the Delaware counties are here laid down according to the late decree in chancery, which is not supposed otherwise to affect the claims of any."

This map was first drawn in 1750 and again corrected and improved before it was published in 1755, as appears by the extended note endorsed on the face of said map, and the maker of it says:

"I have since taken care to procure and examine all the information I could get in order to render it as accurate and useful as possible, which has given occasion to the second edition of it, in which I have likewise inserted all the observations I believe we have for the geography of North America, since I find them grossly misrepresented by others."

"The foundation of this map is the several manuscripts, maps, charts and surveys that have lately been made of our colonies which represent most places from the ocean to the Mississippi, etc."

Here, then, is a map made at the request and with the approbation of the Lords Commissioners for Trade and Plantations, the department of the government that had the special charge of and

jurisdiction over all matters relating to the colonies, and
835 it was made up from official documents, maps, charts in said office, and was evidently constructed with great care and accuracy.

This map clearly shows the boundary line between Maryland and Virginia on the left or northern bank of the Potomac River.

But again, if the charter of Maryland is not to be interpreted by the obvious intent and understanding of the King at the time it was granted as shown above, but in the light of facts that have since been discovered and by the real topography of the country, then the state of West Virginia avers that a strict application of the language of said charter to the facts relating to the headspring of the Potomac River, requires that the line along said river shall be placed on the left or northern bank.

Lieut. Michler, in his report on page 28 of the pamphlet filed with said answer, marked Exhibit "J," says:

"Within 4,132 feet north of the Fairfax stone the line" (speaking of the meridian line run by him from the Fairfax stone to the Pennsylvania line) "crosses the North Branch of the Potomac the stream making a bend to the west and north from the springs, before assuming its general course towards the east. It has a narrow sheet of water there, twenty feet from bank to bank, running through laurel swamps."

The line therefore drawn from the Pennsylvania line south towards the Fairfax stone to the "further bank of said river," would cross the river before it reached said stone, and the "farther bank" would be that bank which becomes the northern bank after the river assumes its general course towards the east.

The rights of Lord Baltimore and of the Virginia Colony were very materially changed by the Revolution of 1649 in England. The Colony of Virginia and especially some of the citizens who claimed rights on the eastern shore, among them William Claiborne, had vigorously contested Lord Baltimore's charter,
836 and his rights under it from the time it was granted, and in the midst of these controversys came the Revolution of 1649 in Great Britain. Charles I was beheaded Jan. 30, 1649. The Commonwealth in England commenced from that period and continued, under different modifications until the restoration of Charles II in 1660. Oliver Cromwell was declared Protector, January 9th, 1654, and died on the 13th September 1658. He was succeeded by his son, Richard Cromwell, but he abdicated in 1659. Sir William Berkley, the Governor of Virginia, and the council and burgesses were loyal to Charles II. On the deposition of the monarchy in England doubts existed in America whether the powers of the Governor and Council and the other officers of the Colonial Government, deriving their appointment from them, were not extinct. This gave rise to one of the provisions of the first act of the Grand Assembly, held at James City, on the 10th day of October 1649, which made it highly penal to maintain such doubts, and declared all defenders of the execution of Charles I accessories to the death

of the King after the fact; and to doubt the right of succession of Charles II was made high treason, and it was made equally treasonable to propose a change of government or to doubt the powers of the governor and government of Virginia.

See Hennings Statutes at large Vol. 1, pages 358-359-60-61.

In 1651 the Parliament sent over Commissioners "to reduce all the plantations, within the Bay of Chesapeake to the due obedience to the Parliament and the Commonwealth of England." These commissioners were the same William Claiborne who had been in constant controversy with Lord Baltimore, together with Richard Bennett and Edmund Curtis.

The Virginia authorities surrendered to these commissioners promptly. By the article "at the surrender of the countrie," agreed on by these Commissioners on behalf of the Parliament and
837 by the Governor and Council and burgesses for the whole colony of Virginia, on the 12th day of March, 1651, for the surrendering and settling of the plantation of Virginia, under the obedience and government of the Commonwealth of England, it was solemnly agreed and concluded:

"4 That Virginia shall have and enjoy the ancient bounds and limits granted by the charters of the former Kings and that we shall seek a new charter from the Parliament for that purpose against any that have intrenched upon the rights thereof."

The commissioners having reduced Virginia as aforesaid, then proceeded to reduce Maryland, and in 1652 they established for her a provisional government, with Bennett for Governor and Claiborne Secretary.

From 1652 to 1654 they entrusted the government to a "Board of Ten." A civil war broke out, but it was not until 1658 that the proprietary government was re-acknowledged. And after the death of Oliver Cromwell the Colonial authorities of Maryland herself asserted the supreme authority of the people, and that the allegiance of the Colony was due to the King.

For these general facts of history see Holmes University series, and No. 142 of the De Jarnette Papers, entitled Lord Baltimore's case uncased, page 115 of the report of the Va. Comm., 1873, and documents printed therewith, "Exhibit A," above.

Thus it may well be claimed that the Colony of Maryland became an imperial colony by the treaty with the Commonwealth of England, and that treaty was never modified or disturbed by any absolute act of Oliver Cromwell. Maryland and Virginia both became imperial provinces of the Commonwealth of England and were both within the prerogative of imperial grant.

Meantime the grant of the Northern Neck of Virgina had been made to Lord Hopton and others which was afterwards con-
838 firmed in 1667, by which the river Potomac was granted to these patentees. Lord Baltimore was deprived of his proprietary rights for eleven years or more under the Commonwealth and Cromwell, and again by the King from 1690 to 1715. It was not

until 1715 that he was restored to his lord lieutenancy by King George I. He was restored to his proprietaryship of Maryland.

See narrative and critical history of America edited by Justin Windsor, Librarian of Harvard University, vol. III, pages 131, 148, 153 to 168, 517, 536, to 542 and 554. But during the time of his deposition his territory had been reduced on all sides. By the decree establishing the southern Pennsylvania border far south of forty degrees parallel, and by the establishment of the boundaries of the Delaware territory which had been granted to the Duke of York. And so if the Potomac River had been originally included in the limits of this charter, it was taken away by the grant of Lord Hopton and others, which had been subsequently confirmed by Charles II upon his restoration to the throne of England. Lord Baltimore never regained the territory taken by Penn from his northern boundary nor did he ever regain the territory of Delaware. And it is submitted that Lord Hopton's grant of the Potomac River and the settlement with the Parliamentary Commissioners by which the ancient limits of Virginia were restored, had the effect to deprive him as effectually of that river, if indeed it ever belonged to him, and had the means by which he was deprived of the territory acquired from his dominions by Penn and Delaware.

Furthermore, the State of West Virginia submits that the King of Great Britain and his council had absolute authority and control over the American colonies before the American Revolution, and could change their limits and jurisdiction at his royal pleas-
839 ure. And that therefore it was entirely within the power of the King Charles II to grant the Potomac River to Lord Hopton and others when he did, although it may have been embraced within the limits of the charter previously granted to Lord Baltimore.

Therefore the State of Virginia claims and insists that the boundary line between her and the State of Maryland is the line of low water mark on the north bank of the Potomac River from the division line between Virginia and West Virginia to the head spring of the North Branch of the Potomac River at the Fairfax stone, and thence running from said Fairfax stone by the course of the line run by Francis Deakins in 1788 to the Pennsylvania line.

Wherefore the State of West Virginia prays that the State of Maryland be made a party defendant to this bill, and that a subpœna be issued and served upon the proper officers of said State, and that she be required to answer this bill; that this Honorable Court will establish by proper orders and decrees the true boundary line between the State of West Virginia and the State of Maryland to the line of low water mark on the north bank of the Potomac River, from the division line between West Virginia and Virginia to the head spring of the North Branch of the Potomac River at the Fairfax Stone and thence running from said Fairfax Stone by the course of the said line run by Francis Deakins in 1788, to the Pennsylvania line, and the rights, jurisdiction and sovereignty of the State of West Virginia over all the territory west and south of said

lines to be declared established and confirmed to her and her title, possession, jurisdiction and sovereignty over the same be settled and quieted to her, and that she may have such other and further relief, general or special as the nature of her case may require or it
840 may seem meet to this Court to grant.

THE STATE OF WEST VIRGINIA,
By T. S. RILEY,
Her Attorney General.

T. S. RILEY,
S. L. FLOURNOY,
GEO. E. PRICE,
Solicitors for West Virginia.

(Endorsed:) The State of West Virginia *vs.* The State of Maryland. Cross Bill.

(Endorsed:) Supreme Court U. S. October Term, 1893. Term No. 6, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Cross-Bill of the State of West Virginia. Filed June 1, 1893.

841 And afterwards, to wit, on the 30th day of October, A. D. 1893, the following entry appears of record, viz:

No. 6, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. John P. Poe, of counsel for the complainant, leave is hereby granted to file the answer of the complainant to the crossbill of the defendant and a stipulation of counsel in relation thereto.

842 And on the same day, to wit, on the 30th day of October, A. D. 1893, a stipulation extending time to file answer to cross bill was filed in the words and figures following, viz:

843 In the Supreme Court of the United States.

No. 6, Original.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

Agreement.

It is agreed that time for filing the answer of the State of Maryland to the cross-bill of the State of West Virginia may be extended by order of the Court until the first Monday of November, 1893.

S. L. FLOURNOY,
GEO. E. PRICE,
Of Counsel for the State of West Virginia.
JOHN PRENTISS POE,
Atty. Gen'l of Maryland, for Maryland.

(Endorsed:) Supreme Court U. S. October Term, 1893. Term No. 6. Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Stipulation postponing time for filing answer of State of Maryland to Cross-Bill of State of West Virginia. Filed Oct. 30, 1893.

844 And on the same day, to wit, the 30th day of January, A. D. 1893, the answer to cross-bill was filed in the words and figures following, viz.:

845 In the Supreme Court of the United States.

No. 6, Originals.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

THE STATE OF WEST VIRGINIA
vs.
THE STATE OF MARYLAND.

Answer of the State of Maryland to the Cross-Bill of the State of West Virginia.

John Prentiss Poe, Attorney General of Maryland.

846 In the Supreme Court of the United States.

No. 6, Originals.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

THE STATE OF WEST VIRGINIA
vs.
THE STATE OF MARYLAND.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States.

The answer of the State of Maryland to the Cross-bill of the State of West Virginia against her in this honorable Court exhibited.

This respondent, reserving all proper exceptions to the said Cross-bill, for answer thereto says:

1. She admits the filing of her Bill in this case and the filing of the answer thereto by the State of West Virginia, but for greater certainty, as to the averments of said Bill and answer, she respectfully begs leave to refer thereto.

847 2. Reiterating the several allegations in her bill, and praying anew the relief therein asked, the State of Maryland,

being advised that the said Cross-bill can best be answered by a more full and particular statement of the historical facts upon which she relies for the successful assertion of the claim to her true boundary as in her said bill set forth, respectfully shows:

3. That the charter from King Charles the First to Cecilius, Baron of Baltimore was accepted by him, and by the authority thereof, legislative assemblies were convened and a regular government organized, which at different times recognized the said charter as the muniment and evidence of the territorial limits and boundaries of Maryland, of the prerogatives and jurisdictions of the proprietary and of the rights, privileges and liberties of the freemen and inhabitants within those limits and boundaries, as will appear by their acts, ordinances, resolutions and proceedings among the records of the said province.

4. That the said charter, with a translation thereof, was, by the authority of the legislative assemblies and of the government aforesaid, prefixed to, published, recorded and embodied with the several collections of the provincial laws compiled at different times, that the limits and boundaries of Maryland, the prerogatives and jurisdictions of the proprietary government, and the fundamental principles and authority, by which those laws were enacted, might be perpetuated and publicly known; that the said record and publication of the charter with the translation aforesaid hitherto have been and are still received and admitted as legal and competent evidence by the judicial, executive and legislative functionaries of Maryland, and by other tribunals and authorities elsewhere. They were also recognized in the declaration of rights, made in the year 1776 by the freemen of Maryland in convention.

848 5. That, at November session, 1798, it was resolved by the General Assembly of Maryland, among other things, that William Kilty be appointed to revise the acts of assembly of this State, and to prepare an edition thereof including all public acts then in force from the year 1692, to the end of that session, inclusive, to be accompanied by a full and complete index to the whole, compiled in the manner of Bacon's edition of the laws of Maryland. It was also resolved that the said William Kilty include in the said collection the original charter to Lord Baltimore, bill of rights, the constitution of this State as originally adopted by the convention, together with the several alterations that have been made to the said constitution by Acts of Assembly since that period. That in pursuance of the said resolutions, the said William Kilty did include in the said collection the original charter to Lord Baltimore, which said collection and original charter so included as aforesaid, were, by authority of the legislature, published and made a part of the records of Maryland.

6. That when the said province was granted, the south branch (altho' unexplored and but little known) was and still continues to be the main source and an essential part and the principal course of the river Potowmack, extending westerly upwards of sixty miles further, and with a wider, deeper and more copious stream than the north branch, which was then and still continues relatively but a

small tributary st-eam. That the first fountain of the said south branch became and was, as designated and described by the said charter, the true meridian of the Western line and boundary of Maryland, and the said river Potowmack, together with the south branch aforesaid being part and the main course of the same river, from the said first fountain, on the further bank thereof into a certain place then called Cinquack (now Smith's point) near the mouth of the said river, where it disembogues into the aforesaid bay
849 of Chesapeake, became and was as designated and described by the said charter, the southern and south-western line and boundary of Maryland.

7. That, for many years after the grant aforesaid, large tracts of land, adjoining and surrounding the western and southern boundaries aforesaid were and remained unsettled, wild and uncultivated, the haunts of savages and hostile Indians, defenceless and exposed to their ravages and incursions, and the lands were of little value, which prevented or delayed the actual location and ascertainment of the first fountain of the river Potowmack and of the western and southern boundaries aforesaid as designated and described in the charter aforesaid.

8. That long before the grant of the province of Maryland, the colony or province of Virginia became and was a royal government, and the crown of England being entitled to and possessing the territory, dominion and sovereignty thereof, James the Second, the reigning King of England, in right of the crown, many years after the grant aforesaid, granted and transferred to Thomas Lord Culpepper, certain lands lying in the Northern Neck of Virginia, defined and described in the letters patent to be all that entire tract, territory or parcel of land situate, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough or Potowmack river, the courses of the said rivers as they are commonly called and known by the inhabitants and descriptions of those parts, and the Chesapeake bay, and that the territory or parcel of land so granted, devolved by inheritance on Lord Fairfax. That the western line dividing the said land from the colony or province of Virginia, and the calls and boundaries thereof never having been run, settled, defined or located, disputes and controversies arose between the government of Virginia and Lord Fairfax, and his heirs, in relation to conflicting territorial claims. That in consequence of those disputes, some time about the year seventeen hundred and forty-six,
850 the government of Virginia and Lord Fairfax set up a stone boundary near or about the head of the north branch of Potowmack, as the supposed or pretended head spring of the said river Potowmack, and from thence ran and marked a line to the supposed head spring of the Rappahannock, commonly called the Conway, to be and remain the established western and dividing line of the said land, granted to Lord Culpepper, from the territories of the government of Virginia.

That this stone was so set up *ex parte* and without the knowledge or consent of Charles, Lord Baltimore, the then Proprietary of Maryland or of his government, or officers. That some time in the year

seventeen hundred and fifty-three, Frederick, Lord Baltimore, then the Proprietary, having been informed of the agreement and settlement of the stone boundary and line aforesaid by and between the authorities of Virginia and Lord Fairfax, and of their claim being extended to the north branch, objected to such claims and the proceedings thereon, and remonstrated by his letter and instructions to Governor Sharpe, which were presented by him to his council in August 1753. In said letter, in alluding to the Fairfax grant, he remarked that the Government of Virginia had undertaken to ascertain the limits of his charter and that the commissioners instead of stopping at the south branch, which runs from the first fountain of the Potowmack, had gone even to the north branch; that if any such adjustment was made he had no knowledge of his predecessor being a party to it, and, therefore, concluded by it. He, therefore, directed the Governor to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise Lord Fairfax of his desire to adjust that boundary with him, and at the same time, he commanded the Governor to keep a good lookout and prohibit settlements under Fairfax in the country north of the south branch. That, thereupon, the council summoned Colonel Thomas Cresap, one of the settlers in the western part of the province, who had knowledge of the course and extent of these branches.

851 The said Thomas Cresap attended at the next session of the council in September 1753, and informed them that on examination, in his opinion, the south branch of the Potowmack was the longest stream, because it continued, as he thought, the longest stream even from its mouth and ran about sixty miles further in a north-western direction, than did the north branch.

That Governor Sharpe, afterwards, on the 12th day of September, 1753, prepared and sent a letter to Lord Fairfax with the consent of the board, in which he informed him of the instructions received from the Proprietary, and that he had obtained such information as induced him to believe that there had been some mistake in fixing the fountain head of the Potowmack at the source of the north branch, as the relative length of the two branches and other circumstances concurred to show that the south branch, commonly "Wappacomo," is the main and principal course of that river; and expressed a hope that Lord Fairfax would concur with him in causing an examination of the two branches; that the south branch had never been thoroughly explored and traced to its source, and that such examination into its course, length, width and depth, would bring the matter to a nearer degree of certainty. All of which will more fully appear by reference to the record of the proceedings of the Executive Council of Maryland, transcripts or copies of which marked Exhibits A and B, are herewith filed and prayed to be taken as part hereof. That afterwards on the 17th day of October, 1753, the Governor received a letter of Lord Fairfax, dated 24th September, 1753, and laid the same before the council who ordered the same to be recorded, in which Lord Fairfax acknowledged the receipt of the Governor's letter as stated above in Exhibit B, and observed that he perceived Lord Baltimore designed to dispute with him which was the head spring

of Potowmack, the south or north branch, as run out between his Majesty and himself, that the south branch would be much
852 to his advantage, and therefore he thought it improper for him to appear therein, and that the Governor of Virginia and the Governor of Maryland should transact the affair; that if Lord Baltimore should obtain his demand, he, Lord Fairfax, would insist upon a new line between his Majesty and himself to the southward; as will more fully appear by reference to the records of the proceedings of the Executive Council of Maryland, a transcript or copy of which, marked Exhibit C, is herewith filed as part hereof. That, about the time the said boundary and dividing line between the Government of Virginia and Lord Fairfax were adjusted and established as aforesaid, the Proprietary of Maryland, was engaged in a long and protracted dispute and controversy with the Proprietary of Pennsylvania, in relation to the northern and eastern boundaries of Maryland, and had no knowledge or notice of, nor was he party to the proceedings relative to their dispute and establishment of the boundary and line between them as aforesaid, and cannot in law or equity be concluded or bound by them in the settlement and location of the western and southern boundaries of Maryland as defined and described in the charter aforesaid. That the proprietary and constituted authorities of Maryland did not consent to, or acquiesce in the establishment of the boundary and line between Virginia and Lord Fairfax, made and fixed by them as aforesaid, but, on the contrary, at all times objected to the same and continually asserted and claimed, and this respondent does still assert and claim, the first fountain of the south branch of Potomac to be the true meridian by which the western line of Maryland is to be run, and the river Potomac, from the said fountain to the mouth thereof, to be the ascertained and defined southern limits and boundaries of Maryland according to the true intent and meaning of the charter aforesaid.

9. That the prosecution of the claim of the Proprietary by the constituted authorities of Maryland, to the south branch of
853 the Potomac and the necessary efforts to explore and locate the same to its first fountain or source, were suspended and retarded from the year 1753 until about the year 1770, by the French and Indian Wars waged on the frontiers and within the territorial limits of Maryland, and by the occupation of all those lands surrounding and lying between the north and south branches aforesaid and to the westward thereof by savages and hostile Indians, and also by a proclamation, issued by the King of Great Britain, in the year seventeen hundred and sixty-three, prohibiting the colonial governments from granting any lands or making settlements west of the sources or heads of any of the rivers flowing into the Atlantic from the west and north-west, and, after the termination of these wars, by the agitation and resistance of the colonies to the stamp act attempted to be enforced upon them by the British Government. A copy of said royal proclamation is herewith filed, marked Exhibit D, and prayed to be taken as part hereof. That, after these difficulties had subsided, the Governor of Maryland, some time in the year 1771, appointed commissioners, with authority to proceed to

the head of the south branch of *of* the Potomac, in search of its most western fountain, to get a meridian, and to ascertain the relative extent and bearings to the west of the first fountains of the north and south branches aforesaid. That the said commissioners undertook the trust; and after having made in part, an actual survey and plot thereof, they reported to the Governor in the form of a letter signed by Thomas Cresap, one of the said commissioners, among other things, that agreeably to his Excellency's commission, he (Thomas Cresap) proceeded to the head of the south branch in company with the other two commissioners, and two surveyors, with a number of pack horses, and choppers, and two chain carriers. That after a diligent search they found the most westerly fountain to be a fountain of the north fork of the south branch of the Potomac. That the spring from which they proceeded with their north line was
854 small, but about a hundred roods from it, a little more easterly, broke out twelve springs, which made a large branch at once; that a small distance from it, over a small ridge, was one of the fountain of James river; south of the other, and to the west, was a fountain of Greenbrier, as they were informed; that they made a small wall of stone around the spring, from which they proceeded, and covered it with a large broad stone, on which they cut these letters C. Ld. B., the initials of the name and title of Lord Baltimore, from which they continued their line for upwards of nine miles, to a smart creek, about two or three roods wide, running to the west, as well as all the waters they crossed in the above distance and for some miles further the water continued running to the west; that the next water they came to was two branches of Cheat, and soon afterwards they left off running; that the reason of their breaking up and coming home before finishing was for want of provision and money to pay off packhorsemen and choppers; that the hire of packhorses was very high, for they had killed three, and several of the others were not able to travel home; that since their return home they had received his Excellency's letter informing them that a surveyor was coming to assist with some particulars, such as staff and plum; those they made use of in the same manner Mr. Dixon and Mason did in running the province line; that they were threatened very hard by some of the Virginia people before they set out; that fifty men were appointed to meet them and take them prisoners, but they were not molested by any person; that on this survey of the two branches, a plot was made by them on which the south and north branches were delineated with a meridian running through the head of each, and the meridian through the head of the south branch was upwards of twenty miles more west than the meridian through the head of the north branch; which said report and plot on the survey aforesaid were deposited and now remain in the archives and among the records of the prov-
855 ince, as by reference thereto will more fully appear, and which are ready to be produced when required.

10. That in November 1772, the Board of Revenue constituted by the Proprietary, and consisting of the Governor, the Commissary

General, the Deputy Secretary, the Attorney General and the Judges of the Land Office, examined the accounts and vouchers of the said Col. Thomas Cresap for necessaries paid by him as a commissioner appointed to run a true meridian line from the first fountain of the river Potomac, including an allowance to himself, John Revely and Lr. Charles Wheeler commissioners, and for two surveyors, amounting in the whole to the sum of £1056.19. .7½ current money which were passed and allowed, and by order of his Lordship's commissioners, paid out of the money arising from the sale of his manors and reserved lands. After the meridians were run and plotted by the said Thomas Cresap as aforesaid, the western lands still remaining unsettled, the Proprietary continued his former order, making the reserve and prohibiting surveys and grants of lands westward of Fort Cumberland, in obedience to the command of the King's proclamation issued as aforesaid, and to avoid giving any offence, and to avoid disputes with the Crown and Lord Fairfax in relation to the line settled between them, until a favorable opportunity should occur of bringing the matter and location of his western boundary to the first fountain of the south branch, as aforesaid, before the King in council. That, afterwards in March 1774, the said Board of Revenue took off the reserve, and passed a resolution that surveys and grants of land westward of Fort Cumberland might be made, and opened a land office for that purpose, and several persons, availing themselves of this privilege, obtained warrants and made surveys of land not only to the west of Fort Cumberland, but located their warrants westward of the meridian line drawn from the head of the north branch of the Potomac river and to the westward of the Alleghany mountains. The Proprietary's agent and receiver
856 general opposed these proceedings of the Board of Revenue as premature and impolitic, and contended that the Proprietor's noble predecessors had cautiously avoided giving any offence by granting lands to the westward of the line settled between the crown and Lord Fairfax; for although there could not be a doubt but the fountain head of the south branch was the spot intended from which the meridian line was to be drawn as the western boundary of Maryland, yet they waited for a favourable opportunity of bringing this matter before the King in council, where there could not be the least doubt of his Majesty's equity and justice; and such an opportunity might soon occur, as the Pennsylvanians had imprisoned an officer, acting under commission from Lord Dunmore, and his lordship in return had caused three magistrates, under commission from Governor Penn, to be arrested and carried to Williamsburgh; that these steps might very soon bring the extension and boundaries of those Governments before his Majesty in council, where only they could be settled; and should this be the case, it would be a favourable time for the proprietor to put in his claim to all the land lying to the eastward of a meridian line drawn from the head spring of the south branch of the Potomac river, till it intersected the west line run between Maryland and Pennsylvania; that it was highly improper, from these appearances, for the proprietor or his officers to throw the first stone by granting lands over

the Alleghany mountains, and that the office ought not to have been opened, for granting lands to the westward of Fort Cumberland, and of a meridian drawn from the head of the north branch to its intersection with the west line of the Province; that, however clear the right might be, a delay for exercising that right for a short time could not weaken it, or encourage the Virginians to consider it as a dereliction; that it would be more to the interest of the proprietor to delay granting those lands until the dispute should be set-
857 tled, than to bring on an abrupt contest by exercising the right at that particular time.

That on the contrary, the judges of the land office in justification of their proceedings, contended and urged that the charter gave the proprietor to the fortieth degree of north latitude, thence west until it intersects a meridian from the first fountain of the Potowmack river, and as the late proprietor had been lately at the expense of running a line to the head of the south branch of that river, the limits of the province ought not to be restricted or confined by his officers; that if *they* doubted the extension of his limits, such doubt would encourage the Virginians to begin to throw stones, which they had never yet done; that it was to the interest of the proprietor to make the surveys and grants of lands lying to the westward as aforesaid, and the measures pursued by the judges of the land office, by authority of the Board of Revenue were consistent with policy and tended to promote the proprietary's interest. In May, 1774, the Board of Revenue took under consideration the subject and the letters from the agent and general receiver, to the judges of the land office, with the answers thereto, and sustained them and approved their proceedings. The board admitted that the former proprietors were not inclined to enter into contests with the Crown, but determined and were of opinion that the making of surveys and issuing patents with a view to effect gradual and peaceable settlements under the charter ought not then to be stopped, but continued, and might strengthen the proprietor's right, whilst his reluctance and delay to claim and exercise it might weaken it and encourage the interposition of the Virginians, who had then done no acts, nor made any grants to interfere with the proprietor's claim or rights; whereupon the board unanimously agreed to transmit copies of the said letters and answers to the Lord Proprietary, together with their reasons in justification of the above measure adopted by them, as fully appears by the record of their proceedings, to which this respondent
858 refers for more particular information and a copy of which will be produced when required.

11. That the Proprietary was afterwards prevented, by the revolutionary war, from bringing the claim for the settlement of his western boundaries before the King in council, and in the year seventeen hundred and seventy-six, the territorial rights and government of the Proprietary, together with the dominion of the British crown within the province of Maryland, were dissolved and annulled by the Declaration of Independence, whereby the State of Maryland became free and independent, and thereby acquired the right of soil together with the sovereignty, jurisdiction and dominion over the

territories within, and to the extent of, the limits and boundaries designated and described in and by the charter hereinbefore recited. The several facts aforesaid, and charter hereinbefore stated, being publicly and well known, and the southern and western boundaries aforesaid still remaining unsettled, the Commonwealth of Virginia, then a free and independent state, by the twenty-first section of her constitution or form of government, recognized the territorial rights of Maryland, in the following words, to wit:

"The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potowmack and Pocomoke, with the property of the Virginia shores or strands bordering on either of said rivers, and all improvements which have been or shall be made thereon."

Thereupon the Delegates of Maryland elected by the authority of the people for the express purpose of forming a new government in full and free convention assembled, adopted and unanimously passed the following resolutions, to wit:

859 "Resolved unanimously, that it is the opinion of this convention that the State of Virginia hath not any right or title to any of the territory, bays, rivers or waters, included in the charter granted by his Majesty Charles the first to Caecilius Calvert, baron of Baltimore.

Resolved unanimously, that it is the opinion of this convention, that the sole and exclusive jurisdiction over the territory, bays, rivers and waters included in the said charter, belongs to this State; and that the river Potowmack, and almost the whole of the river Pocomoke, being comprehended in the said charter, the sole and exclusive jurisdiction over the said river Potowmack, and also over such part of the river Pocomoke as is comprehended in the said charter, belongs to this State."

12. That the war waged by Great Britain against the United Colonies was prosecuted and continued with unusual severity until the end of the year 1782, and during that time no opportunity occurred for ascertaining and adjusting the western and southern boundaries of Maryland.

That at about that time or since, the Commonwealth of Virginia wrongfully took possession of that tract of land or territory lying eastward of the meridian line down from the first fountain of the south branch of Potomac to the west line between Pennsylvania and Maryland, and between the north and south branches, and continued wrongfully to exercise jurisdiction over the same, until the formation of the State of West Virginia.

That the State of Maryland hath uniformly asserted and claimed that the true western limit or boundary of Maryland was and is a line drawn from the first fountain of the south branch to the west line between Pennsylvania and Maryland, and that the true southern

boundary was and is the Potomac from the first fountain of the south branch as described and granted by the charter above recited, and that the claim of Virginia to any other dividing line was never acquiesced in or conceded by Maryland; that the claim as above stated, has never been relinquished or abandoned, but on the contrary was publicly and frequently urged and maintained by Maryland from the year 1788 until the year 1833, as appears by
860 the Act passed in the year 1788, regulating the allotments to the soldiers of the western lands and by several legislative resolutions passed in the years 1795, 1796, 1801, 1810, 1832 and 1834, to which this respondent refers for more particular information and which are ready to be produced when required.

That Governor Brooke, of Virginia, acknowledged the receipt of the resolutions and admitted the question of dispute to be open, with a promise to lay the Maryland proposition before his Legislature, as appears by his letter to Governor Stone, dated January 9th, 1796; also, that Governor Tyler of Virginia in his letter to Governor Kent of Maryland, acknowledged the receipt of the Maryland resolutions for the ascertainment and permanent settlement of the boundaries, and admitted the matter in dispute to be of great importance, and the questions involved to be open for friendly settlement, as appears by his letters dated 4th of May, 1826, to which reference is made as above.

From the foregoing recital it clearly appears that the Commonwealth of Virginia wrongfully took possession of a part of the true and lawful territory of Maryland, as plainly described in her charter, pretending that the said Fairfax stone near the head of the north branch of the Potomac is the true meridian of the first fountain of the river Potomac, and the western and southern boundary of Maryland; whereas, this respondent charges and insists, and the truth is, that the said stone is not at the true meridian of the first fountain of Potomac and is not the western and southern boundary of Maryland; that it was set up *ex parte* by Lord Fairfax and the Government of Virginia as a boundary line, between themselves, and not as a boundary of Maryland, and in fact is not set up at the first fountain of the north branch; that the Proprietary of Maryland was not a party to the proceeding and had no notice or knowledge of it; that the constituted authorities of Virginia were interested in extending their own limits, and by establishing that boundary, confined and restricted the territorial boundaries of Maryland
861 and enlarged their own; that the Government of Virginia and Lord Fairfax were never legally authorized to establish or settle the said stone as a boundary of the territorial limits of Maryland; and that Maryland is not, and ought not to be affected or concluded by it.

In corroboration of the aforegoing facts and claim this respondent begs leave to file as part hereof, marked "Exhibit E. McMahon's Statement and Argument," a part of chapter 1 of McMahon's History of Maryland, from page 49 to page 72. Also a copy of the resolutions (Nos. 126 and 128) referred to and the report thereon of a special committee of the General Assembly of Maryland, made in

1832, marked "Exhibit F, Report of Special Committee," recommending a commission similar to that provided for by the resolutions of 1826,

"to settle and adjust by mutual compact between the two governments the southern and western limits of this State, and the dividing and boundary lines between this State and the Commonwealth of Virginia."

13. This respondent further states and avers that by the charter above recited and the fair construction thereof, Maryland is justly entitled to the soil and the exclusive sovereignty and jurisdiction of and over the whole territory and tract of land described in the said charter and extending westerly to the meridian line drawn from the first fountain of the south branch of the river Potomac to intersect the west dividing line between Pennsylvania and Maryland, and extending toward the south, from the said west dividing line, unto the further bank of the said river and binding therewith from the first fountain aforesaid on the west and south unto a certain place formerly called Cinquack, now Smith's Point, situate near the mouth of the said river where it di-embogues into the aforesaid bay of Chesapeake, and of all and every part thereof; and that the head spring or source of the south branch aforesaid, is and ought to be, by the true construction of the charter aforesaid, the true meridian of the first fountain of the river Potowmack, and the meridian
862 line drawn or run from the same due north to intersect the west dividing line between Pennsylvania and Maryland, is and ought to be the western territorial boundary and limits of Maryland, and the Potowmack from its first fountain aforesaid to Smith's Point near the mouth of the said river in the Chesapeake Bay, is and ought to be the southern and south-western boundary and limits of Maryland, and that the right of soil, the sovereignty and jurisdiction over the lands, territories and premises lying and being eastward of the said meridian line to the extent and within the boundaries and limits mentioned, defined and described in and by the said charter, and over the citizens and inhabitants thereof, of right belong to and ought to be quietly and peaceably exercised and enjoyed by the State of Maryland.

14. This respondent further shows that on the 5th of March, 1833, the Legislature of Virginia passed the following Act:

Commonwealth of Virginia.

Chap. 32. An Act to settle the western limits of this State, and the dividing and boundary line between this State and the Commonwealth of Maryland.

1. Be it enacted by the General Assembly of the Commonwealth of Virginia:

That the Governor be and he is hereby authorized to appoint three Commissioners on the part of this State to meet such Commissioners as may be appointed for the same purpose by the Commonwealth of Maryland, to settle and adjust, by mutual compact between the two governments, the western limits of this State, and the dividing and

boundary line between this State and the Commonwealth of Maryland, to commence at the Fairfax stone, or at the first fountain of the Cohongorooton or north branch of the Potomac river, and to run a due north course to intersect the line between this State and the State of Pennsylvania. If, however, the Commonwealth of Maryland shall fail to appoint Commissioners, then, and in that event, the Commissioners appointed by the Governor of this Commonwealth, or any two of them, shall run and mark the said line according to the provisions of this bill; and the Commissioners appointed as
863 aforesaid are required to report their proceedings in virtue of their appointment and authority to the General Assembly of this State at the session next after the same shall have been concluded, for confirmation or rejection.

[The remaining sections provide for re-granting lands "after the confirmation of the settlement as aforesaid;" for the employment of a surveyor and assistants and their payment, as also the payment of the Commissioners; and that the Act shall be in force from the time of its passage.]

In response to this Act, the Legislature of Maryland, on the 14th of March, 1834, passed the following resolutions:

No. 80.

Resolutions Relative to the Controversy Between this State and the State of Virginia, in Regard to the Southern and Western Boundaries.

Resolved by the General Assembly of Maryland, That it is necessary for the peace and security of our people, and the dignity of the State, that our southern and western boundaries should be finally settled and defined.

Resolved, That this State has seen, with deep regret, the refusal on the part of Virginia, to leave the settlement of these boundaries to friendly arbitration as proposed by this State.

Resolved, That the Attorney General of this State be and he is hereby requested to cause suit to be instituted in the name of the State of Maryland, against the Commonwealth of Virginia, in such manner and form as may be technically required, in the Supreme Court of the United States, for the purpose of procuring a final legal adjustment and settlement of the southern and western boundaries of this State.

Resolved, That the Governor and Council of this State be and they are hereby authorized and requested to select and employ two additional counsel to assist the Attorney General, one of whom shall be requested to collect and prepare the evidence, written or oral, to illustrate and establish the claims and pretensions of this State, in regard to our southern and western boundaries.

Resolved, That all adversary proceedings on the part of this State, against the State of Virginia, shall cease at any time before suit brought or final judgment, when that State shall accept the overtures of Maryland, made by her resolutions, at December session eighteen hundred and thirty-one.

Resolved, That the Governor of this State be authorized and requested to transmit to the Governor of Virginia, a copy of the foregoing report and resolutions as soon as practicable.

Subsequently, to wit, on the 20th of October, 1834, this respondent, in pursuance of said last-mentioned resolutions, filed a bill in this Honorable Court, against the Commonwealth of Virginia, to the wrongful holdings, claims and pretensions of which the State of West Virginia now claims to have succeeded, in which, as hereinbefore set out, the rights and claims of this respondent to her said western and southern boundary, under her charter and recognition thereof by the Commonwealth of Virginia are asserted and prayed to be established by decree of this Honorable Court.

Subsequently, in consequence of the well grounded belief that the controversy between this respondent and Virginia might be amicably arranged by negotiation, the said bill was voluntarily dismissed in accordance with the directions of the Legislature of Maryland, given in the following report of a special committee and Resolution No. 99, passed March 21, 1835:

No. 99.

Report and Resolution in Relation to the Southern and Western Boundary of this State.

The special committee to whom was referred so much of the late executive message, as relates to the southern and western boundaries of this State, have given to the subject that careful examination and attentive consideration, its great importance, and the delicate nature of the pending controversy in relation thereto with a sister State, seemed to require, and respectfully beg leave to

Report.

That although they have been unable to discern any thing in the executive communication immediately referred to them, or the previous actions of the State of Maryland, in relation to this interesting subject, which does not command their entire approbation, or which would indicate the propriety of reviewing, in any manner at this time, the merits of the controversy, or recommending any relaxation or change in the course deliberately determined upon by the State, at the last session of the Legislature, yet anxious to preserve, if possibly within the reach of any means compatible with the honor and just rights of Maryland, that harmony and good understanding heretofore so long and so happily existing between the two States, your committee have thought it might be conducive to that desirable end, and not inconsistent with the duties assigned them, to notice some of the views expressed in the late message of his excellency Governor Tazewell, to the Legislature of Virginia, in reference to this subject. This document is not officially before us, but it has been given to the world through the press, and emanating from so

high a source, and treating of the very subject your committee are charged to inquire into, with apparent and indeed express regret that circumstances exist, which, in the judgment of his Excellency, preclude Virginia from a direct communication of her views to Maryland, your committee think they might be deemed wanting in their duty, if not in that respect, of which Virginia and her functionaries are ever worthy, were they to pass it over in silence. In that document it is declared that the law of Virginia "to settle the western limits of that State, and the dividing boundary line between that State and the Commonwealth of Maryland," passed 5th March, 1833, was intended as an acceptance of our "own proposition in the amicable settlement" of the questions existing between us. That the determination of Maryland to seek a decision of her rights by the judicial authority of the Union, was probably occasioned by "a misapprehension of the terms" of that enactment of Virginia, which was susceptible of satisfactory explanation, now only withheld, and with regret, because the attitude of Maryland is regarded as hostile or menacing.

Your committee have been unable to discover any thing in the proceedings of Maryland, which could suggest the idea of menace, nor does it seem to be at all applicable to the intimate relations existing between the members of this confederacy; certainly nothing could be more foreign to the intentions of Maryland, than to assume such an attitude in relation to Virginia, one of her earliest and most glorious allies, not nearer geographically than in consanguinity and affection. Her great strength we know with joy, not envy; and in her glory we have always felt the keen interest of participation.

Maryland had never a hostile feeling towards Virginia; cannot wish to do her violence or wrong, but on the contrary, desires the removal of the only source of disagreement, in order, that if possible their union may be more intimate, and established forever on the best and surest foundations.

The southern and western boundaries of Maryland have never been adjusted and defined, by compact with Virginia. We
866 hold by a Charter, a charter which has been fully and solemnly recognized by the State of Virginia, but in the interpretation of that instrument, the two States have not been agreed. It is right—even indispensable, that the interpretation should be settled, and the limits of the States ascertained, and our sister State cannot but some time perceive that in that settlement her voice (admitted to be equal) is not entitled to preponderating influence.

The State of Maryland seeks or desires nothing which is not hers of right, and it is necessary for her honor, that in her controversy, though amicable, and with her sister, the terms of adjustment shall not be dictated to her.

A brief review of the proceedings of Maryland, would demonstrate that she has from time to time mildly reminded her sister State of her claims, and sought to refer them to the examination of commissioners, to be appointed by the parties, from among their own citizens respectively, desiring only to provide for the appointment of an

umpire by one of our disinterested sister States, in the event of disagreement among the commissioners. In such propositions Maryland has evinced her confidence in the justice of her cause, but has suggested nothing incompatible with the dignity of Virginia. She has desired, and still desires the peaceful ascertainment of her rights, never doubting but Virginia would deem it necessary to her true glory to do right at whatever sacrifice, just that the relative rights of herself and neighbors should be equitably ascertained, and govern herself accordingly, without reckoning her means of resistance.

The law of Virginia, before referred to, of March 5th, 1833, has been understood by us as not only not in accordance with, but directly repulsive of, the equitable and moderate wishes of Maryland, as an undertaking in truth, by one of the parties, absolutely to settle and pronounce against the claim of the other.

So regarding it, the State of Maryland determined to lay her controversy before that high and independent tribunal, empowered by all the States to hear and decide "all controversies between two or more States;" and she has unshaken confidence that when the founders of the union agreed that all controversies between these States, should be settled by appeals to justice, and not to arms, they did not fail to achieve that peculiar and brightest glory of our country.

It is, however, gratifying to learn from a source entitled to so much respect, that we may have misconceived the proceedings and intentions of Virginia, and to be allowed to hope that she may yet do what may not be less advantageous and becoming to her than to Maryland. It would be lamentable that false honor or strained punctilio should be permitted to estrange these States, or prevent the free course of explanation and liberal and just actions among them.

867 That State will probably be regarded by posterity, as well as our cotemporaries, as most loyal to the common welfare, and to its own honor, which shall be most distinguished by forbearance and moderation; under the influence of these sentiments, your committee recommend that the "door of explanation" which Virginia seems to consider closed upon her, by the resolutions of the last session of the Legislature, be opened wide, by their unconditional repeal, and the discontinuance of all proceedings under them; and that the Governor of this State be requested to communicate to the government of Virginia, this intelligence, and to propose to re-open with that government, a negotiation for the final adjustment of this long pending controversy, upon the basis of the resolutions of the General Assembly of Maryland, passed at December session, 1831, and for these purposes your committee have proposed, and herewith report to the House, sundry resolutions.

Resolved by the General Assembly of Maryland, That resolution No. eighty, passed at December session, eighteen hundred and thirty-three, in relation to the southern and western boundaries of this State, and the controversy on that subject with the State of Virginia, be and the same are hereby repealed, and the Attorney Gen-

eral of this State is hereby directed to discontinue all proceedings under the same.

Resolved, That the Governor be, and he is hereby authorized and requested to transmit a copy of the above resolution, without unnecessary delay, to His Excellency, the Governor of Virginia, and also to communicate to the government of Virginia, the earnest desire of the State of Maryland, to close and finally adjust this long pending question, by amicable negotiation.

This respondent further shows that the expectations of an amicable adjustment of the long pending dispute between Maryland and Virginia, as to said boundary, upon which said bill was voluntarily dismissed, were not realized; and that while Maryland never relinquished her claim, as heretofore set out and as formally asserted in said bill, no further steps were taken for many years to bring the said controversy to a settlement—and so the question stood.

15. The Deakins line, so much referred to in the answer of the State of West Virginia and in the said Cross-Bill, was not run by him as the true boundary line between the two States. But for the very purpose of avoiding all misconstruction in the Maryland
868 Act of 1888, chapter 44, under which said line was run, the military lots therein mentioned were set out in territory north of the north branch of the Potomac and running next to "the present supposed boundary of Maryland;" and in said Act it was also declared:

SECTION 15. "That the line to which the said Francis Deakins has laid out the said lots is, in the opinion of the General Assembly, far within that which this State may rightfully claim as its western boundary, and that at a time of more leisure the consideration of the Legislature ought to be drawn to the western boundaries of the State, as objects of very great importance."

16. This respondent shows that the said invasion of her territory by Virginia was never assented to or acquiesced in, and that when, in 1776, thirty years after the said unauthorized and *ex parte* setting up of said Fairfax stone, the Commonwealth of Virginia in her constitution, ceded, released and forever confirmed to the people of Maryland the territory contained within her charter, Maryland had a right to suppose and did suppose that such abandonment of said wrongful possession was deliberate and final and that no attempt would be made to set up in the face of such disclaimer of all right, a title by adversary possession.

The more especially too, was this view proper to be held, inasmuch as the said public declaration in the Constitution of Virginia was soon followed by the memorable compact of 1785, beetween Maryland and Virginia, which, in many of its articles, is a valid and subsisting compact to this day.

Nor can it be fairly supposed that so soon as two years after said compact and eleven years after said disclaimer by Virginia, Maryland could have entertained the idea that it would be withdrawn and repudiated and that the Deakins line would ever be claimed, by Virginia, as the true boundary between the two States.

17. From the time when, in the confident expectation that this

long pending controversy between the two States of Maryland and Virginia would be amicably settled, the said bill in this
869 Honorable Court was dismissed by Maryland, down to the year 1852, a period of sixteen years, no further step seems to have been taken by either State in reference to the subject. But in May, 1852, the General Assembly of Maryland passed the following Act:

An Act for Running and Marking the Western Boundary Line of This State.

Whereas, it is of great importance that the western territorial limit of the State of Maryland be clearly defined and her boundary be permanently established; and whereas, the true location of the western line of Maryland, between the States of Maryland and Virginia, beginning at or near the Fairfax stone on the North Branch of the Potomac river, at or near its source, and running in a due north line to the State of Pennsylvania, is now lost and unknown, and all the marks have been destroyed by time or otherwise; and whereas, the States of Virginia and Maryland have both granted patents to the same tracts of land at or near the supposed line, and as suits of ejectment are now pending in the Circuit Court of Alleghany County, in the State of Maryland, by persons holding under Maryland patents against persons now in possession and holding land under patents granted by the State of Virginia, which cannot be justly settled without establishing said boundary line;

Therefore, SECTION 1. Be it enacted by the General Assembly of Maryland, that the Governor be and he is requested to open a correspondence with the Governor of Virginia in relation to tracing, establishing and marking the said line, and in case the Legislature of Virginia shall pass an Act providing for the appointment of a Commissioner to act in conjunction with a Commissioner on the part of Maryland in the premises, then and in such case, the Governor be and he is hereby authorized and requested to appoint a commissioner who, together with the Commissioner who shall be appointed on the part of Virginia, shall cause the said line to be accurately surveyed, traced and marked with suitable monuments, beginning therefor at the said Fairfax stone and running thence due north to the line of the State of Pennsylvania.

SEC. 2. And be it enacted, that it shall be the joint duty of the Commissioners after running, locating, establishing and marking the said line, to make a report setting forth all the facts touching locating and marking said line; and it shall be the duty of the Commissioner of each respective State to forward copies of the joint report to each of their respective Legislatures; *and upon the ratification of said report by the State of Virginia and the*
870 *State of Maryland, through their respective Legislatures*, the said boundary lines shall be fixed and established so to remain forever, unless changed by mutual consent of the two States.

In reply to this Act, the following Act was passed by Virginia in 1854:

Whereas, the General Assembly of Maryland has passed an Act for running and marking the boundary line between that State and the State of Virginia, beginning therefor at the Fairfax stone on the Potomac river, sometimes called the North Branch of the Potomac river, at or near the source and running thence due north to the line of the State of Pennsylvania; and whereas the Legislature of Maryland has requested the appointment of a Commissioner on the part of this State to act in conjunction with the Commissioner of Maryland to run and mark said line; Therefore be it enacted,

1. That the Governor appoint a Commissioner who, together with the Maryland Commissioner, shall cause the said line to be accurately surveyed, traced and marked with suitable monuments, beginning therefor at the Fairfax stone, situated as aforesaid, and running thence due north to the line of the State of Pennsylvania.

Said Act then directs the Commissioners, after running, locating, establishing and marking the said line, to make a report setting forth all the facts touching the same to their respective Legislatures, and then provides that:

Upon the ratification of such report by the Legislatures of the States of Virginia and Maryland, the said boundary line shall be fixed and established to remain forever, unless changed by mutual consent of the said States.

Nothing appears to have been done under these two Acts, but in 1858, Virginia passed an Act providing for a joint commission to trace the southern boundary from Smith's Point to the Atlantic ocean, and the western boundary from the Fairfax stone to the Pennsylvania line.

The Maryland Act of 1852, chapter 275, it will be observed, provided only for the appointment of a joint commission to run and mark a line due north from the Fairfax stone, with the express declaration that such line so run, *when ratified by both Legislatures* should be the boundary between the States, but con-
871 tained no provision concerning the settlement of the *southern* boundary. Accordingly, Mr. T. J. Lee, the Commissioner appointed by Maryland under it, met Col. Angus W. McDonald, the Commissioner on the part of Virginia, and proceeded to carry out his instructions in reference to the *western* boundary.

To aid the Commissioners in their work, upon application to the Federal Government, the services of Lieutenant N. Michler, an experienced engineer, were secured, and a line from the Fairfax stone north to the Pennsylvania line was run and marked.

The line run by Lieutenant Michler, differs materially from the Deakins line. It runs from the Fairfax stone and strikes the Pennsylvania line about three-quarters of a mile west of the Deakins line, and gives to Maryland a wedge of territory three-quarters of a mile at the base and thirty-seven miles long.

As hereinbefore shown, the Maryland Act of 1852, provided that when this line was ratified by the Legislature of each of said States, it should stand as the definite boundary.

The ratification was promptly given by Maryland by the passage of the following Act of 1860, chapter 385:

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An act for the establishment of the southeastern and northwestern boundary line between this State and Virginia, and making further appropriation to complete the survey and marking of the same.

SECTION 2. And be it further enacted, That the northwestern line of this State is a line commencing at the Fairfax stone, at the head of the North Branch of the Potomac river, and running thence due north to the southern line of Pennsylvania, as surveyed in the year 1859, by the commissioners appointed by the States of Maryland and Virginia, in conformity with the laws passed by the said States for that purpose.

Section 3, appropriated $10,000 "for the payment of the States' proportion of such expenses as may required to complete the survey and record of said line," etc.

872 Virginia, however, instead of uniting in such ratification, passed two resolutions upon the subject. The first provided for the erection of suitable monuments to mark Michler's line, and the second authorized the Governor to send an agent to Europe to collect record and documentary evidence "tending to ascertain and establish the true lines of boundary between Virginia and the States of North Carolina, Tennessee and Maryland." These resolutions demonstrate that the boundary up to that line was not settled or considered by Virginia to be settled; but, on the contrary, it was treated as still an open question.

18. Upon this state of facts, this respondent is advised and therefore charges, that inasmuch as the offer of compromise made by her, by her said Act of 1852, chapter 275, was not accepted, and the line as run by Lieutenant Michler, was not ratified by Virginia, this respondent is clearly remitted to her original rights under her charter and the distinct recognition of her said boundaries thereunder by the Virginia Constitution of 1776, as hereinbefore shown.

19. The civil war, which broke out in 1861, necessarily prevented, for a time, any further consideration of this boundary question; but in 1868, the Legislature of West Virginia, obviously taking the ground that inasmuch as the Michler line had never been ratified by Virginia, West Virginia was not bound by it, and that the boundary question was still an open unsettled question, passed an act (chapter 175) authorizing the Governor to appoint a commission to ascertain the line between West Virginia and Maryland, commencing at the Fairfax stone and running north to the Pennsylvania line, and to communicate with the Governor of Maryland with the view of having a joint survey made.

No such joint survey was made.

In 1886, the General Assembly of Maryland passed the following resolution:

PAGES

873 No. 5.

Joint Resolution Relating to that Part of the Boundary Line Between Maryland and West Virginia from the Fairfax Stone to the Mason and Dixon's Line.

Whereas the General Assembly of Maryland did, by the Act of eighteen hundred and sixty, chapter three hundred and eighty-five, adopt by law as the northwestern line of this State the line surveyed in eighteen hundred and fifty-nine by the Commissioners appointed by the State of Maryland and by the State of Virginia under the authority of laws passed by said respective States; and

Whereas said line which now divides the State of Maryland from the State of West Virginia has not yet been adopted by law by said last-mentioned State, and some conflict of jurisdiction and authority must arise by reason of such omission; therefore,

Be it resolved by the General Assembly of Maryland, That the Governor of this State be requested to bring the subject to the attention of the Governor of the State of West Virginia, and to request him, in the exercise of his good judgment, to invite the attention of the General Assembly of West Virginia thereto, to the end that said Honorable Body may consider the matter as soon as practicable, and take such action as may conform to the conclusions reached by said Commissioners, and as may prevent any conflict of jurisdiction between the States of West Virginia and Maryland and confirm their friendly relations.

Doubtless, in response to this Act, the General Assembly of West Virginia, passed in 1887, the following Act:

Chapter I. An Act to confirm and establish a part of the boundary line between the State of West Virginia and the State of Maryland. (Passed May 3, 1887.)

Be it enacted by the Legislature of West Virginia:

1. That the boundary line as run and marked by N. Michler, U. S. engineer, in the year one thousand eight hundred and fifty-nine, under the direction of A. W. McDonald, Commissioner on the part of Virginia, and Thos. J. Lee, Commissioner on the part of Maryland, from the Fairfax stone to the Pennsylvania line, between the county of Preston, West Virginia, and the county of Alleghany, now Garrett, Maryland, be and the same is hereby approved and confirmed as the true boundary line between the State of West Virginia and the State of Maryland:

874 2. But this Act shall not take effect until and unless the State of Maryland shall pass an Act or Acts confirming and rendering valid all entries, grants, patents and titles from the Commonwealth of Virginia, to any person or persons, to lands situate and lying between the new Maryland line hereby established and the old Maryland line heretofore claimed by Virginia and West Vir-

ginia, to the same extent and like legal effect, as though said old Maryland line were hereby confirmed and established.

The conditions of this Act were naturally not acceptable to and have never been accepted by Maryland; and being unable to bring to a final settlement her protracted controversy with Virginia, and subsequently with West Virginia, she shows that for the protection of her just rights, which she respectfully insists she has never abandoned, she has finally brought this suit, to the end that by a decree of this Honorable Court, the question shall be definitely determined.

As a convenient and succinct history of the controversy, of which free use has been made in this answer, this respondent begs leave to file, as part of this answer, a printed report of a committee of the Historical Society of Maryland, on the "Western Boundary of Maryland," read before the Society on December 9, 1890.

It is marked "Exhibit G, Report of Committee of Maryland Historical Society."

20. Upon advice, this respondent denies that from the beginning up to 1834, when she filed her bill, as hereinbefore stated, in this Honorable Court, against the Commonwealth of Virginia, she ever abandoned, relinquished or surrendered her chartered western boundary. She denies that she ever acquiesced, during that period, in the seizure of her rightful territory between the Fairfax stone and her true boundary, the first fountain of the Potomac; and she denies that any or all of the alleged acts of adversary possession during that period gave to the Commonwealth of Virginia any rightful title or claim to said territory.

875 Upon advice, she denies further that by and under any of the acts of her Convention, General Assembly, Governors or other officers, since 1834, down to the present time, and especially since 1851, she has precluded herself from asserting her said chartered western boundary.

For the sake of peace and a definite settlement of the line, she was content, as shown by her said Act of 1852, chapter 275, to have the line run from said Fairfax stone, and when the line so run was ratified, to submit to the same. As heretofore shown, no such ratification was ever made, nor was the location of the line ever agreed on. And, therefore, upon advice she charges that she is not concluded by said Act not by what was partially done thereunder, but is still at liberty to assert her original rights. If, however, by reason of lapse of time or laches, or by force of said Acts of 1852 and 1860, and of what was done thereunder, she can be fairly held to have lost her right to reclaim the territory embraced within her chartered western boundary as unjustly claimed by West Virginia, the contrary whereof she maintains, she is advised that by no act or declaration or acquiescence of hers is she precluded from insisting, that the line, as run by Lieutenant Michler, shall be established as the very least of her just and lawful claims.

The Southern Boundary.

21. As to the southern boundary, this respondent shows that she has uniformly claimed that by the true construction of the charter

to Lord Baltimore, her southern line was the further or southern shore of the Potomac. No surrender of this right can be found. Nor has there ever been any submission to, acquiescence in, or recognition of, any adverse claim.

Upon advice, therefore, she insists that there is no ground whatever for denying to her the full benefit of the plain boundary as given to her in said charter.

876 Moreover, she knows that after a long protracted discussion between her and Virginia as to said southern boundary, the question, under appropriate legislation of the two States, was submitted to the arbitration and award of the Honorable Jeremiah S. Black, Honorable James B. Beck, and Honorable Charles J. Jenkins. After a full examination of the whole subject, Messrs. Black and Jenkins decided that the claim, so uniformly made by this respondent, was correct, and accordingly rendered an award in her favor.

They fixed the said southern boundary as the same had always been claimed by this respondent, to wit, the southern shore of the Potomac, and the line so fixed by them was in 1878 declared to be the true line by concurrent Acts of Maryland and Virginia, and by a confirmatory Act of the Congress of the United States, (1878, ch. 196), to which legislation, in the published acts of Congress, Maryland and Virginia, this respondent begs to refer as a part of this answer.

West Virginia was not a party to this arbitration and award, and is not, therefore, bound by it. But this respondent, without undertaking to set out in this answer the case as presented by Messrs. Black and Jenkins, for the sake of brevity, respectfully adopts the same, averring that their conclusions are correct, and that because they are correct they should be accepted by this honorable Court as a just and rightful decision of the controversy.

No allusion is made in the cross-bill to this memorable adjustment of the long pending controversy between Virginia and Maryland, but this respondent submits that it cannot be necessary in this answer to do more than to refer to said award and praying that the same may be taken as a part of this answer, to ask, as this respondent respectfully does, that it may be adopted by this honorable Court as decisive of this dispute.

877 This respondent, believing with the State of West Virginia, that the settlement of the controverted boundary between it and said State is now most important and necessary, unites in the prayer that this honorable Court, in this proceeding, will pronounce such a decree as shall forever set at rest all dispute between these two States as to their territorial boundaries.

And, as in duty, &c.

THE STATE OF MARYLAND,
By JOHN PRENTISS POE,
Attorney General.

878 EXHIBITS.

879 EXHIBIT A.

From Frederick, Lord Baltimore's, Instructions to Gov. Horatio Sharpe, 1753.

Md. Arch. MS. Lib., J. R. & U. S., p. 11.

"Whereas the Right Honorable Lord Viscount Fairfax has a grant of a large tract of land lying and running along the banks of Patowmack River on the Virginia side, and whereas I am informed the powers of government in Virginia have taken the liberty to ascertain the bounds and limits of his said Lordship's grant running along the banks of the said river, which river, to the further bank thereof, is limited to me with its soil and water, and is a boundary between my Province of Maryland and the Province of Virginia unto the fountain head of the said river; and whereas I am informed that commissioners have proceeded therein, and instead of their stopping at South Branch, which runs from the first fountain of Patowmack River, one of the boundaries of Maryland, have crossed to a branch running north, whereby their endeavours are to give limits and boundary marks prescribed by my royal charter, subjecting me to great loss of country; and whereas it being not known to me that my predecessor was made a party to the settlement of such boundaries by the said commissioners; and were it so, such settlement would be invalid by virtue of my father's marriage-articles, he being only tenant for life, with reservation to me as tenant in tail; I therefore desire and require of you, as soon as possibly you can, to get intelligence how such boundaries have been or are settled by the said commissioners with regard to Lord Fairfax and his grant; and at the same time, if opportunity serves you, you may communicate to Lord Fairfax that I am very desirous of settling proper limits conclusive between him and me in regard to my Province of Maryland and his grant in Virginia; and in the mean time you must make or have made a good look out, and warning given to such persons as shall venture to settle in such disputed boundary between my Province of Maryland and the Province of Virginia under the said grant to Lord Fairfax."

880 EXHIBIT B.

Sharpe to Fairfax.

[SEPT., 1753.]

Md. Arch. Sharpe Cor. I., 6.

"* * * Lord Baltimore was pleased to charge me with an inquiry into the true meridian and place of the fountain head of Potowmack. The best information I have hitherto been able to procure gives me reason to believe there has been a mistake in fixing the spring head to the North Branch, since the length, with other

circumstances, more properly denotes the Southern Branch commonly called Wappacomo, to be the main and principal course of that river. I am the more willing to be persuaded of the truth of this representation from the considerable advantage that will accrue to your Lordship. That branch, I am informed, has never been thoroughly explored and traced to its source; but I flatter myself with having your Lordship's concurrence for such an examination into its course, length, width, and depth as may bring this matter to a nearer degree of certainty; and if that should appear to be the fountain head of Patowmack River, I shall not question but your Lordship will be for taking such measures as may ascertain the mutual limits of the two Proprietorships, agreeable to the direction and true intention of their respective charters."

Exhibit C.

Fairfax to Sharpe.

"Frederick, *September the 24th,* 1753.

"Sir: Yours I received by Mr. Young, by which I perceive Lord Baltimore designs to dispute with this Province which is the head spring of Patowmeck, the south or north branch as run out by the commissioners between his Majesty and me in the year 1736.

"I am intirely [of the opinion?] that the South would be much to my advantage, and therefore think it improper for me
881 to appear therein, and that the Governor of Virginia and your excellency should transact that affair. If his Lordship should obtain his demand, I must insist upon a new line between his Majesty and me to the Southward."

Exhibit D.

Extract from the Royal Proclamation of Oct. 7, 1763.

"And whereas it is just and reasonable, and essential to Our interest and the security of Our colonies that the several nations or tribes of Indians with whom We are connected, and who live under Our protection, should not be molested or disturbed in the possession of such parts of Our dominion and territories as, not having been ceded to, or purchased by, Us, are reserved to them or any of them, as their hunting grounds, We do therefore, with the advice of Our Privy Council, declare it to be Our Royal will and pleasure that no Governor or Commander-in-Chief in any of Our Colonies of Quebec, East Florida, or West Florida, do presume, upon any pretense whatever, to grant warrants of survey or pass any patents for land beyond the bounds of their respective governments as described in their commissions; as also that no Governor or Commander-in-Chief in any of Our other Colonies or Plantations in America do presume for the present,

Md. Arch. MS. Lib. J. R. & U. S. p. 379.

and until Our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic ocean from the west and north-west."

882 EXHIBIT E.

McMahon's Statement and Argument.

Thus were finally adjusted what are now the eastern and northern boundaries of Maryland, which separate it from the states of Delaware and Pennsylvania respectively. Yet even this controversy had not terminated before the proprietary of Maryland found himself involved in another, menacing the loss of another fertile portion of his province. Like the bayed lion, he had only shaken one adversary from his mane, to turn him to another who was biting at his heel. A whole century had been spent in fruitless contests for his northern and eastern territory, and he was now to begin another contest for his southern and western boundary, which has not terminated even at this day, and is likely to be of equal endurance with the former. This related to, and grew out of the description of "the first fountain of the Potowmack," as the common terminus of the western and southern boundaries of Maryland: and was predicated upon a grant of the northern neck of Virginia, to the origin of which it will be necessary briefly to refer.

New sources of controversy.

It was first granted by Charles II. in the first year of his reign, or rather, the first year after Charles I. was beheaded, for Charles II. was then a monarch without a crown, a king without subjects, and a grantor without territory. He was then emphatically Charles "*Lackland,*" and in an admirable condition for making grants to secure the adhesion of the followers of his fallen fortunes.

Grant of the northern neck.

The grantors in this grant were Lord Hopton, Lord Jermyn, Lord Culpepper, Sir John Berkeley, Sir William Morton, Sir Dudley Wyatt, and Sir Thomas Culpepper, and the territory granted, was, "all that tract of land, lying and being in America, and bounded within the heads of the rivers Rapahannock and Quiriough or Potowmac, (the courses of the said rivers as they are commonly called and known by the inhabitants) and the "Chesapeake bay." After the restoration of Charles, the validity of the grant was drawn in question, and the title to it having passed, by the death of some of the proprietors, and by purchase from others of them, to the earl of St.
883 Albans, Lord Berkeley, Sir William Morton and John H. Tretheway, Esquire, the original grant was surrendered by them for the purpose of receiving a new grant for the same territory, for which they accordingly obtained letters patent from king Charles, in May, 1669. Although Virginia was, at the period of these grants, a royal government, (as the colonial governments, which were directly administered by the crown, were styled:) and being such, the power of the crown to grant, at its pleasure, the vacant lands within

its jurisdiction, was unquestionable, they yet occasioned great discontents amongst the colonists of Virginia. The grant of Maryland, as we have already seen, was long resisted as a dismemberment of the colony; and being followed by these grants, they began to apprehend their reduction to a secondary rank amongst the colonies. Yet the grants of the northern neck carried with them nothing but the rights of soil, and the incidents of ownership, for they were expressly subjected to the jurisdiction of the government of Virginia. The discontents fermented by this and other acts of the crown, rose to so high a pitch, that agents were sent to England, in April, 1675, by the Assembly of Virginia, who were instructed amongst other things to remonstrate against the grant, and to request that the Assembly might be authorized, by act of incorporation, to purchase it from the proprietors. Their requests were favourably received, but the gratifications of them was prevented by causes, to detail which would be foreign to our present purposes. It will suffice to say, that the title to the whole having vested in Thomas Lord Culpepper, a new patent for it was granted to him by King James II. in the fourth year of his reign, and that from him it descended to his daughter and only child, who was married to Lord Fairfax, and thus passed into the Fairfax family. (65)

The extension of the claim under these grants to the north branch.

These grants of the Northern Neck, as it will be perceived, call for the lands lying on the south side of the Potomac to its head, and in this call there was nothing inconsistent or clashing with the call of the charter in Maryland. The call of the latter is to the first fountain or source of the Potomac, which was of course its head, and therefore a conflict between these two grants could only arise from the extrinsic difficulty or doubt, as to the true location of the first fountain or head. As then, the patents for the northern neck did not appear upon their face to be infractions of the proprietary's chartered rights, and could only become so by disputes about the true location of the common call, they were not calculated to excite his jealousies, or to beget difficulties between him and the claimants under the former, until the settlements began to extend towards the head of the Potomac. Hence, it does not appear that his attention was directed to the ascertainment of the first fountain, or that he was involved in any controversies about it, until the middle of the eighteenth century. Early in that century, Lord Fairfax had visited Virginia for the purpose of surveying the grant of the Neck; and it appears from the recitals of an act of the Virginia Assembly, in the year 1736, that at that period, he and his predecessors, through their agents and attornies, had already granted a consideration portion of it. (66) In 1748, a Land Office for the grant of the lands in the neck, was formally opened by Fairfax, and kept open until

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(65) For the history of these grants, of which a summary is given above, see Chalmer's, 330, and notes. Keith's History of Virginia, 166. Recital of the 13th Chapter of Acts of Assembly of Virginia for the year 1736, and the case of Fairfax's Lessee against Hunter's Devisee, 7th Cranch's Reports, 603.

(66) Keith's History of Virginia, 166. Virginia Revised Code of 1812, 1st vol. 8 to 14.

his death, in 1781, which was conducted in his name, and at his expense, as the proprietor of the northern neck. (67)

A wide field being thus opened to the spirit of enterprise and speculation, the grants were soon extended so far to the west as to raise the question as to the location of the head of the Potomac, and at the same moment that Frederick Lord Baltimore, the then proprietary, was endeavoring to ascertain the exact effect which the agreement of 1732, relative to his northern boundaries, would produce upon his grant, we find him directing his attention also to its western limits. In his instructions to governor Sharpe, which were presented by the latter to his council in August, 1753, he alludes to the Fairfax grant, and remarks that he had been informed that the government of Virginia had undertaken to ascertain the limits of his charter: and that the commissioners who had been appointed for this purpose, instead of stopping at the South Branch, which runs from the first fountain of the Potomac, had gone even to the North Branch—that if any such adjustment was made, he had no knowledge of his predecessor being a party to it; and therefore concluded by it, that if it were made with the privity of the latter, it would be invalid, as the former proprietary held the province only as a tenant for life under a strict settlement. He therefore directs the governor to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise lord Fairfax of his desire to adjust that boundary with him: and he at the same time commands him to "keep a good look out, and prohibit settlements under Fairfax in the country north of the South Branch." (68) These instructions being laid before the council, in order to a compliance with them, they endeavoured to collect information with reference to the relative extent of the north and south branches of the Potomac, and for this purpose they summoned before them Col. Thomas Cresap, one of the settlers in the western extremity of the State, who was supposed to be familiar with the course and extent of these branches. He accordingly attended at their next session in September, 1753, and informed them, that in his opinion the south branch of the Potomac was the longest stream, because it continued, as he thought, the longest stream even from its mouth, and ran about sixty miles further in a north eastern direction than did the north branch. (69) Thus informed, the governor addressed a letter to lord Fairfax, in which, after apprising him of the instructions received from the proprietary, he remarks that the information, which he had obtained, induces him to believe that there has been some mistake in fixing the fountain head of the Potomac at the source of the north branch, inasmuch as the relative length of the two branches, and other circumstances, concur to show that the south branch, commonly called "*Wappacomo*," is the main and principal course of that river. He therefore expresses the hope,

Course pursued by the proprietary of Maryland.

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(67) See the special verdict in case of Fairfax's Devisee, 7 Cranch, 607.
(68) Council Proceedings of Maryland, Liber T. R. and W. S. page 12.
(69) Council Proceedings, Liber T. R. and W. S. 13.

that his lordship will concur with him in causing such an examination of these branches to be made, as will put the question to rest. (70)

886 The adjustment of the boundaries of Fairfax's grant, which it alluded to in these instructions of the proprietary, was one of the nature of which he appeared to have been wholly unapprised. His instructions are predicated upon the supposition, that the surveys might possibly have been made with the knowledge and concurrence of his predecessor: and hence he denies the power of the latter to enter into any arrangements as to the boundaries which could extend beyond his life estate, or conclude those in the remainder. This caution was wholly unnecessary; for it does not appear, from a full examination of all the proceedings of the proprietary government, on record in the province, that the proprietaries of Maryland were ever, in any wise, privy to any settlement of the boundaries which contemplated the extension of Fairfax's grant to the north branch: nor are we aware that it has ever been alleged. The only adjustment, which ever took place, was one, growing out of controversies between Fairfax and the government of Virginia, having reference, solely, to the conflicting territorial claims, and concluded by proceedings, to which Baltimore was in no wise a party, and of the existence of which, he and his government appear to have had no knowledge, before they were terminated. The histories of Virginia are singularly barren, in all that relates to this adjustment between the crown and lord Fairfax; and there are no published or unpublished documents within our reach, which enable us to present it in detail, or to illustrate fully the character of the controversy which it terminated. Mr. Jefferson has given us a reference to the several documents connected with it; but in such a manner, as to indicate, rather, that he merely knew that they were in existence, than that they had come under his personal observation. (71.) Enough, however, is known, to enable us to state the general result, which alone is important in connexion with our present enquiry. It appears that in 1733, a petition was preferred by Fairfax to the King in Council, praying, that a commission might issue for running and marking the dividing line, between his grant and the province of Virginia, and that the commission was accordingly issued, and the surveyor made and reported in August, 1737. In December, 1738, these reports were

887 referred to the consideration of the council for plantation affairs, by whom a report was made in 1745, which determined the head springs of the Rappahannock and Potomac, and directed that a commission should issue to extend the line. This report was confirmed by the King in Council; and the line being adjusted in conformity to it, an act was passed by the General Assembly of Virginia, in the year 1748, which adopts the order in Council, and confirms all previous grants made by the crown, of

The previous adjustment of the boundaries between the government of Virginia and lord Fairfax.

(70) Jefferson's Notes on Virginia, 193 and 194.
(71) Jefferson's Notes on Virginia, 193 and 194.

lands lying within the limits of the Fairfax grant. (72.) The line thus settled, adopted the north branch of the Potomac, as the first head of that river, by which location of it, thus pushing over the Fairfax grant to this branch, without even considering, much less respecting, the claims of the proprietary of Maryland, each of these interested parties were to be benefitted at his expense. On the one hand, the territory subject to the jurisdiction of Virginia was enlarged; and on the other, Fairfax gained a more valuable territory lying between the north and south branch, than that which he lost lying east of the head of the south branch, and between it and a meridian passing over the head of the north branch. During all this period, the situation of the proprietary of Maryland afforded to these parties the most favourable opportunity for practising this usurpation of his rights. His petition for the confirmation of his grant, so as to exclude the claims of the Penns, was then pending before the King in Council, to await the issue of the proceedings in Chancery upon the agreement of 1732, which was all the while progressing. The momentous character of that proceeding was well calculated to engross his attention, and to divert it entirely from these *ex-parte* transactions, on the part of Fairfax, which did not upon their face even profess to interfere with his grant; and to the purpose of which, he was awakened only by the knowledge of the actual location of the north branch. His death, shortly afterwards, prevented the proprietary from adopting any decisive measures for the vindication of his rights; but the instructions of his successor in 1753, immediately after his accession to the proprietaryship, exclude all inference of acquiescence in these unwarrantable acts, and manifest a full determination on his part, to exclude all settle-
888 ments which might be attempted under them upon his territory.

The letter of the governor of Maryland to Fairfax shews us, that this determination of the proprietary was promptly met, and seconded by his officers: but we are left utterly in the dark as to the further progress of the negotiation thus opened. From this period, until the revolution, the existing records of our Council and Assembly transactions are entirely silent as to this contest, of which an accurate history can be collected, only from the records of the English Council. We know only that Fairfax continued to adhere to the line, as adjusted between him and the crown, and to issue grants for the disputed territory; and that the proprietary of Maryland continued to assert his claims to the first fountain, be that where it might, and waited but a favourable opportunity for bringing the subject before the King in Council. For some years after the controversy was opened, the attention of the government of the province was wholly engrossed with its internal concerns, and its efforts, in common with the other colonies, in the prosecution of the French and Indian wars: but these

Causes which suspended the controversy between the two proprietaries until the revolution.

(72) Jefferson's Notes, 103. Virginia, revised Code of 1812, page 14.

being terminated by the definitive treaty of peace, concluded at Paris in February, 1763. it is probable, that by the restoration of peace upon the borders, the settlements of Maryland would soon have been pushed to its extreme limits. Had this occurred, there would soon have ensued a collision between the grants of the proprietary and of Fairfax; and this collision would at once, either have brought about an amicable adjustment of the boundaries, or have forced it for determination before the King in Council. At this moment, when the conflict seemed inevitable, two causes for its suspension arose, which held this difference in abeyance, until the revolution came to convert it into a contest between free and independent states. By the treaty of Paris in 1763, above alluded to, a large territory was ceded to the English, within which newly acquired territory, it became necessary to organize colonial governments. For this and other purposes, a proclamation was issued by the king, in October, 1763, by which, and to enable the English government to carry into effect its engagements to the Indians, the colonial governments generally, were prohibited from granting any lands lying west
889 of the sources or heads of any of the rivers, flowing into the Atlantic from the west, and north-west. (73.) In the ensuing April, instructions were issued by governor Sharpe, to the Judges of the Land Office, which set forth, that the proprietary was desirous to have reserved for him, ten thousand acres of land in the western part of Frederick County, to be held as a manor; and that he had therefore instructed the surveyor of that county not to execute any warrant on any lands lying beyond Fort Cumberland, until that reserve was taken off. This general interdict of the crown, and the reserve to the proprietary, each tended to check the progress of the settlements, in the direction of the debateable territory; and the proprietary and his officers now waited for the first favourable opportunity of bringing the question before the council, which might present itself. In 1771, a survey of the two branches was made by Colonel Cresap, under the direction of the proprietary. Our records do not distinctly inform us, for what purpose it was made. The survey itself, has been preserved in our Land Office, and presents a very accurate view of the courses of the two branches, through the heads of which, meridians are drawn, for the purpose of determining their relative extent to the west. From the year 1753 up to this period, it appears to have been continually held on the part of Maryland, that the south branch was the most western source, and therefore, *the first fountain:* but the survey of 1771 appears to have been the first *actual* examination and survey of the two branches, which was made with this view. The papers, connected with the settlement of the expenses of the survey, shew, that it was made under the directions of the proprietary government; and it seems probable that it was made, both for the purpose of informing the proprietary as to the true location of the branches, and of furnishing a basis for any application which might be made by him to the King

(73) This proclamation was not intended to alter the boundaries of the Colonies, but was a mere temporary arrangement, suspending for a time the settlement of the county reserved. See Supreme Court of United States, in Fletcher *vs.* Peck, &c., Cranch, 142.

in Council. In March, 1774, the subject of the reserve, on the lands lying westward of Fort Cumberland, being brought before the proprietary's Board of Revenue, which had been organized in 1766, 67,
890 that Board determined, that the object of the reserve had been accomplished, in the surveys actually made for the proprietary; and, therefore, took off the reserve. This determination led to a correspondence between them and Mr. Jenifer, the proprietary's agent, which exhibits the course of the proprietary before that period, and illustrates his motives for forbearance. Mr. Jenifer disapproved of the course pursued by the Board, in throwing the western lands open for grant; and in the hope of dissuading them from it, he addressed them a letter in May, 1774, in which he states, that he had heard, that grants had been issued since their decision, under which, persons were not only making surveys to the west of Fort Cumberland, but even across the Alleghany mountains, and west of the meridian of the north branch. Such surveys he considered as not only in contravention of the king's proclamation of 1763, but also at war with the policy of the proprietary. The proprietary, says he, has hitherto cautiously avoided giving offence by granting lands westward of the line, settled between the crown and Lord Fairfax; and although there is not a doubt, that the south branch is the fountain head, and the point at which the meridian for the western boundary ought to start, yet the proprietary is waiting for a favourable opportunity of bringing it before the King in Council. In conclusion, he expresses the hope, that some recent territorial differences between Virginia and Pennsylvania, under which, each government had arrested those acting under the authority of the other, would bring about this much wished for occasion. The reply of the Board through Mr. Steuart, relies upon the confession of the Agent, as to what are the proper limits, and declares, that it does not become either them or their agent, to do any act which may have a tendency to restrict those limits. "The proprietary, (say they,) has lately been at the expense of running a line to the south branch, and if the Virginians hear that he doubts about the extension of his limits it will be an encouragement to them to begin to throw stones." Mr. Jenifer still continued to press upon them the propriety of delaying this step, and urged, that as the proprietary had not, before the decision of the Board, made any grants of lands, lying west of the north branch, a delay of the measure could not weaken the proprietary claim, or encourage the pretensions of the Virginians. The Board still adhered to their
891 determination, and large grants of land on the reserve were immediately made, and continued to be made, until October, 1774, when instructions were received from the proprietary, directing the Judges of the Land Office to suspend all further grants of the reserved lands, and to prepare and transmit to his guardians an accurate list of all warrants issued under the order of the preceding March, and of all settlements and locations made within the territory thrown open by that order, since the year 1763. (74.)

(74) The proceedings of the Board of Revenue are preserved, and may now be found in the Land Office. The titles acquired under warrants, issued between the 22d of March and the 6th of October, 1774, to affect lands lying westward of Fort Cumberland, were saved by the Act of 1784, Chap. 75.

Effect of the revolution upon it.

So stood the controversy between the proprietaries, when the American revolution came to elevate the provinces of Maryland and Virginia, to the rank of free and independent states. Fairfax was still the proprietor of the Northern Neck, and in the full exercise of all the powers incident to his absolute ownership of the soil, subject to the jurisdiction of the royal government of Virginia: and the effect of the revolution upon his grant was to substitute the jurisdiction of the state government, whilst it left him in the full enjoyment of the grant. By this change, the question as between the two states, was, as to Virginia, merely one of jurisdiction over the debateable territory, and so remained until the death of Fairfax in 1781. It would be useless, in our present inquiry, to pass in review the legislation of Virginia as to the Northern Neck, subsequently to the death of Fairfax. It will suffice to say, that it was by him devised to Denny Fairfax; and that, in consequence of his alienage and absence from the province, several acts were passed by the Assembly of Virginia, by the last of which, the Act of 1785, chap. 63, the state of Virginia claimed the ownership, and made provision for the grant, of vacant lands in the Northern Neck. All of these acts were subsequently declared by the Supreme Court of the United States to be insufficient to divest the title of Fairfax's devisee; and the defect in his title, because of alienage, was held to be cured by the Treaty of 1794. (75) These acts, 892 which left the title in the devisee, from whom it passed to his grantees, are here adverted to only for the purpose of shewing that as early as 1785, the State of Virginia, having assumed to herself the ownership of the vacant lands in the Northern Neck, stood clothed with claims similar to those of the State of Maryland.

Virginia cedes to Maryland all the territory given by her charter, subject to certain reservations.

Returning to the consideration of this contest for territory, which, by the force of the revolution, had become a subject for adjustment between these sovereign, independent, yet sister states of the confederacy, we are now to unfold the causes which have delayed that adjustment even until this day. That it should now be where the revolution found it, may excite our surprise. The history of the transaction, if it removes the wonder, will also tell us where the censure lies. It has been seen, that, up to the era of the revolution, the claim of the proprietary of Maryland to the first fountain of the Potomac, *be that where it might*, had never been for a moment relaxed, and that, whatever the adversary possession of the disputed territory, it was held in the face of a continual claim and assertion of right on his part, and against his unceasing efforts to reclaim it. The revolution having cast upon the State of Virginia the adjustment of the boundary, under circumstances such as these, left her no equitable objections to urge against the claim of Maryland to the full extent of her territory, as defined by her charter. Hence, in the constitu-

(75) Fairfax's devisee against Hunter's lessee, at February term, 1813, reported in 7th Cranch, 607.

tion of Virginia, adopted in June, 1776, we find a full and express recognition of the right of Maryland "to all the territory contained within its charter, with all the rights of property, jurisdiction and government, and all other rights whatsoever to the same, which might at any time theretofore have been claimed by Virginia, excepting only the free navigation and use of the rivers Potomac and Pocomoke, with the property of the Virginia shores or strands, bordering on either of said rivers, and all improvements which have been or shall be made thereon." (76.)

These reservations secured to her by compact with Md. in 1785.

The object and necessity of this exception will at once be apparent, when we reflect upon the new relation in which the two provinces now stood to each other, as sovereign states; and the promptitude with which the desire of Virginia to keep open to her citizens the enjoyment of these rights of navigation and their incidents, was met and reciprocated by the State of Maryland, places her conduct in a very favourable point of view. (77) In the very next year after this constitutional reservation, by a resolution of the Assembly of Maryland, Daniel of St. Thomas Jenifer, Thomas Stone and Samuel Chase, were appointed commissioners on the part of Maryland for the purpose of adjusting with the commissioners on the part of Virginia (George Mason and Alexander Henderson) "the navigation of, and jurisdiction over, that part of the Chesapeake Bay which lies within the limits of Virginia, and over the rivers Potomac and Pocomoke," subject to the ratification of the general Assembly. (78) The result of the conferences of these commissioners was a compact, formed at Mount Vernon, on the 28th March, 1785, which accomplished all the purposes of their appointment, and which received the ratification of the legislatures of both states at their next session. (79.)

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General view of this compact of 1785.

This compact contains a series of commercial regulations, constituting a treaty of commerce predicated upon the basis of free and equal rights in the navigation of these rivers, to be maintained for their common benefit, by their common

(76) Virginia Constitution of 1776, article 21st.

(77) It is, however, proper to state, that this reservation of Virginia was not well received at first. In October, 1776, the subject of it was brought under the consideration of the convention which formed our present State Constitution, by which several resolves were adopted, asserting in the broadest terms the right of Maryland to all the territory included in the charter, to the sole and exclusive jurisdiction over all the waters, bays, &c., within that territory, and especially to the Potomac and such part of the Pocomoke as falls entirely within its territory; and declaring that the river Potomac, and that part of the Chesapeake Bay lying between the capes and the northern boundary of the State, or so much thereof as is necessary to the navigation of the Potomac and Pocomoke, ought to be considered a common highway, free for the people of both States, without being subject to any duty or charge. See Hanson's Edition of the laws, which includes the journal of this Convention.

(78) Resolution 6th of October Session, 1777.

(79) Virginia Acts of December session, 1785, Chap. 18, and Maryland A. A. of 1785, Chap. 1st.

efforts, and at their joint expense, and securing these in a manner eminently calculated to promote and establish an harmonious and beneficial intercourse. These regulations have been superseded by the adoption of the Constitution of the United States, which devolved upon Congress the power of regulating commerce with foreign nations, and among the several States; but they are worthy of all commendation, and deserve to be the most cherished part of our history, when we remember, that to these may be traced the germ of the causes which called that constitution into being, which freed us from that *"rope of sand"* the confederation, and which placed us under the shadow of that blessed Union, by *whose guidance we have been conducted to happiness as a people, and to peace, power and prosperity, as a nation.* Besides these commercial regulations, it contains provisions for the apprehension and punishment of offenders, for the arrest of absconding debtors, and for the security and protection of the river and bay possessions of the citizens of the two States, which require a passing notice. It provides as to *all offences committed on the part of the Chesapeake bay which lies within the limits of Virginia, or that part of it where the line of division from the south point of Potomac river called Smith's point, to Watkins' point near the mouth of Pocomoke river, may be doubtful, or committed on the Pocomoke within the limits of Virginia, or where the line may be doubtful,* that the jurisdiction over the same, if committed by persons, not citizens of Virginia, against the citizens of Maryland, shall belong to the courts of Maryland, having legal cognizance of such offences, and so *vice versa;* and that if committed by a citizen of Maryland against a citizen of Virginia, or *vice versa,* the jurisdiction over the offence shall belong to the courts of the State of which the offender is a citizen. It establishes the same regulations as to offences committed on the Potomac river, except in cases of offence or crime by a person not a citizen of either State, against a person not a citizen of either, as to which the jurisdiction shall attach in the State to which the offender is first brought. It provides as to all persons absconding or flying from justice in any civil or criminal case, or attempting to defraud creditors by the removal of property, that such person or property so flying or removed, may be seized upon any part of said bay or said rivers, by process of the State whence the party fled, or the property was removed. It permits the process of either State to be served any where, on said rivers, on the person or property of any one not being
895 a citizen of the other State, so that the process of both States may run over the whole extent of these rivers, as against all persons not citizens of either State. And lastly, as to the riparious possessions of the citizens of the two States, it declares: 1st. That the citizens of each State shall have full property in the shores of the Potomac, adjoining their lands, with all advantages and emoluments thereto belonging, and the privilege of making and carrying out wharves and other improvements, provided they do not obstruct or injure the navigation of the river. 2dly. That the rights of fishing in said river shall be open to the equal enjoyment of the citizens of both States, provided that it be not exercised by the citizens of one

State, to the hindrance or disturbance of the fisheries on the shores of the other, and also that the citizens of neither State shall have the right to fish with nets or seines on the shores of the other. 3dly. That for any violence, injury or trespass to, or upon the property or lands of any citizen of either State, adjacent to the bay or the said rivers, or to any person upon such lands, committed by any citizen of the other State, upon proof of due notice to the offender, to appear and answer in any court of record, or before any magistrate having cognizance of such injuries, &c., may enter the appearance of such offender, and proceed to trial, as if the offender were served with legal process, and the judgment so rendered shall be valid against the person and property of the offender in both States, and execution may be issued as in other cases, or upon a transcript of the judgment properly authenticated, produced to any court or magistrate of the State where the offender resides, having jurisdiction in the State or county where he resides, in similar cases, such court or magistrate may issue execution thereon as upon its or his own judgment.

Thus by this compact, irrevocable, except by the assent of both States, all differences were ended which could arise about the rights reserved by Virginia, under her constitution; and Maryland was now, by the concessions of that very constitution itself, as well as by the intrinsic efficacy of her charter, confessedly entitled to all the territory which fell within her chartered limits, subject to the compact. Had she known and pursued her interests, this compact would never have been formed without making the adjustment of the western boundary a part of it; and had the consideration of it been introduced into the negotiation, and its settlement insisted upon by Maryland, it would doubtless have been conceded. Virginia was too much alive to the deep interests which she had staked upon that negotiation, and which might be lost by its failure, to have hazarded all for an interest comparatively so unimportant, as her claim to mere jurisdiction over a portion of what was then her remote territory. That it should have been passed by, whilst a subject so intimately connected with it was under consideration, and that it should not have been brought up, even as a subject matter for negotiation, until 1795, is truly surprising. (80.) In that year, by a resolution of the General Assembly of this State, Messrs. Pinkney, Cooke and Key, were appointed commissioners on the part of this State, to meet such commissioners as might be appointed on the part of Virginia, with power to adjust, by compact between the two States, the western and southern limits of this State, and the dividing lines and boundaries between it and Virginia; and also any claim of either State to territory within the limits of the other; and in the

Efforts for a settlement of the boundary from the period of this compact until the passage of the act of 1818.

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(80) This delay may in some measure be accounted for, by the reservations of land made by the State, to enable her to fulfil her engagements to the officers and soldiers of the Maryland line.

event of agreement, the compact was to be reported to the Legislature for its confirmation. Delay still followed delay, Mr. Pinkney having left the province, and Mr. Cooke having declined acceptance; in 1796, Charles Carroll of Carrollton, and J. T. Chase, Esqrs., were appointed in their stead. (81.) Mr. Key removed from the

(81) Mr. Cooke's letter of declension, which was, by the vote of the House of Delegates, directed to be recorded on its Journals, contains some interesting statements, in relation to the extent of territory dependent upon this controversy. Yet, although it purports to be founded upon an examination of the whole question, it contains some erroneous statements. In adverting to the exploration of the country by colonel Cresap, he states that Cresap, judging more from appearances, than from any actual survey, reported in favour of the north branch, and that it was for some time afterwards supposed to be the first fountain. In this, he is entirely in error. Cresap was examined before the Council in 1753, and made an actual survey in 1771; and on both occasions decided in favour of the south branch. No [illegible] our records show that he was examined on this subject, or employed for this purpose at any other time; or that there ever was a period in the province, when the north branch was held to be the first fountain. Wherever the subject is alluded to, the contrary opinion is universally maintained. As this letter is valuable, not only on account of the facts which it sets forth, but also because it contains the opinions of Mr. Cooke, who was a distinguished lawyer, as to the effect produced upon the claim of Maryland, by the prior occupancy and long continued possession under the Fairfax grant, it is here subjoined.

To the Honorable the Senate and House of Representatives of Maryland:

GENTLEMEN:

By a resolve of the Legislature, passed at the last session, William Pinkney and Philip Barton Key, Esquires, together with myself, were "appointed commissioners on the part of this State to meet" such commissioners as might be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the two governments, the Western and Southern limits of this State, and the dividing lines and boundaries between this State and the said commonwealth; and also to settle and adjust any claim of this State, on the said commonwealth, to territory within the limits of the other.

In the execution of this trust, I have thought it my duty, not only to acquire authentic information of the nature of the possessions held under the Virginia grants of land, within the limits claimed by this State, but also to examine carefully the laws of nature and nations, that it might be known, how far those laws would affect the claims of this State, before such claim was formally made, or prosecuted, in case it could not be otherwise adjusted by an amicable settlement.

The true boundary between this State, and the State of Virginia, depends on the "single" question, which is the first fountain of the river Potowmack? A question which has hitherto rested upon opinion only, without any effectual step having been taken to ascertain the same. Many years ago, the late colonel Thomas Cresap was employed by the proprietor of Maryland to explore the country, and to report the facts that might lead to a decision on this subject; but the country then being little known, and in the possession of savages, it is probable he judged more from appearances, than from any actual survey of it: he reported in favour of the north branch, and for some time after, that was generally supposed to be the first fountain of the river Potowmack. Afterwards, however, a different opinion prevailed, and the late proprietors of Maryland always claimed the land, and in some instances made grants thereof, lying between the north and south branches of that river. At length, a negotiation commenced between the proprietor of Maryland, and Lord Fairfax, the then proprietor of that part of Virginia, respecting this subject: and by consent it would have been established, that the first fountain of Potowmack was at the head of the south branch of that river, if the crown of Great Britain had not been interested in the question, and therefore it became necessary to lay the circumstances then existing before the King and Council, and to obtain their approbation and concurrence before

897 State, and Messrs. Carroll and Chase declined acceptance, and thus the State was again left without commissioners until 1801, when by a resolution of that year, the power of appointment was given to the governor and council. Messrs. Duvall, McDowell and Nelson, were now appointed commissioners, and a correspondence upon the subject took place between governors
898 Mercer and Monroe. The result of it was, that a resolution was passed by Virginia, authorising the appointment of commissioners to meet those appointed on the part of Maryland; but limiting their powers to the adjustment of the western line. Virginia was unwilling even to enter into a discussion of her right to the territory between the two branches, whilst Maryland
899 went upon the broad principle of referring the whole subject to the commissioners. The power of the Virginia commissioners being thus restricted, governor Mercer deemed it unnecessary to request a meeting of the commissioners: and the negotiation ended. (82.) At December session, 1803, this correspondence and the acts and resolutions of the two states to which it related, were referred to the consideration of a committee of the House of Delegates of Maryland, by whom a report was made, recom-

any effectual regulation could take place; and while matters were thus suspended, the revolution commenced, which finally deprived all parties of their interest in the subject.

During the war, the citizens of Virginia began to take up, and immediately after the peace to settle, the land between the north and south branches of Potowmack; and the whole of that country, containing 462,480 acres of land hath ever since been and now is, occupied and claimed by the State of Virginia, or persons holding under grants issued by that State. But if upon a full investigation of this subject it shall be found that the first fountain of Potowmack is at the head of the north branch of that river, still it is of essential consequence to this State, to have the real head or fountain of that branch of the river fixed and well ascertained. There are three springs, or small rivulets, that unite after running a small distance; and the possessions under the title of this State are at present confined to a meridian line drawn from the most southern of those springs, and the lands to the westward of that meridian line are taken up and held under grants issued by the State of Virginia, although both the other springs extend further to the westward, and one of them near three miles. Should this last mentioned spring be deemed the first fountain from whence a meridian line is to be drawn for our western boundary, it will give a country, in addition to what the State now possesses, of three miles broad, and upwards of thirty miles in length.

On reviewing the law of nature and nations, it will be found, that prior occupancy can give no title to Virginia in this instance; nor any length of time bar the claim of this State, if it is otherwise well-founded. Political laws in this, and in most other countries, regulate this subject among the citizens of their respective states; but it cannot be done between independent governments, unless by treaty.

Should the legislature of this State persist in the wish to settle the bounds of this State and Virginia, in the manner proposed by the resolve of the last session, (and which has been delayed by the State of Virginia not having made any appointment of commissioners for that purpose,) it will be necessary to appoint another commissioner in the place of Mr. Pinkney, who is now absent on public business, and some other person instead of myself, as it will not be convenient to me to attend further to the subject.

WILLIAM COOKE.

14th November, 1796.

(82) See the letter of governor Mercer of June 5th, 1802, and the executive communication of November, 1802, to the General Assembly in Council Chamber Records.

mending the running of a provisional boundary line (by agreement with Virginia,) to start from the extreme western source of the north branch, which should be held to be the boundary line of the two States, until further and definitive measures could be taken to ascertain the southern boundary. (83.) This report was not acted upon; and the subject does not appear to have been revived until 1810, when another resolution was passed similar to that of 1801, under which nothing was done; and the subject again slept until it was revived by Maryland in the Act of 1818, chap. 206.

Maryland Act of 1818 and the issue of the negotiations under it.

This State had now become wearied with her efforts to reclaim the territory south of the north branch; and hence this Act of 1818, in proposing to Virginia the appointment of commissioners, agrees to adopt the most western source of the north branch, as the point from which the western boundary shall start. At December session, 1821, of the Assembly of Virginia, an Act was passed, which purported to meet and reciprocate this proposition of the State of Maryland; but was, in fact, materially variant from it. (84.) The Virginia Act did in fact beg the whole question, and left nothing open for negotiation. The Act itself undertook to determine the point from which the line should start, and left nothing to the commissioners but the power of locating it in conformity to its instructions. They were specially instructed to commence the western boundary *at a stone planted by Lord Fairfax on the head waters of the Potomac;* and thus they were tied down to the old adjustment, between Fairfax and the crown. The Virginia Act was therefore entirely different from that of Maryland, which directed the commissioners to begin at the most western source of the north branch, be that where it might, and being dissimilar, it did not justify the appointment of commissioners on the part of Maryland. Our Act of 1818 expressly directed, that the appointment, on the part of this State, should be made only after Virginia had embraced its propositions by the passage of a similar act; and no act could be considered similar, which did not confide to their commissioners the same powers of adjustment, and adopt the same basis of settlement. This was, however, overlooked by the executive of Maryland: and commissioners were appointed on the part of both States, who assembled on the head waters of the north branch in the summer of 1824. (85.) Upon the instant of their assemblage, it was discovered that the positive instructions to the Virginia commissioners would operate as a bar to all further proceedings. The Maryland commissioners came instructed to locate

(83) Journals of the House of Delegates.

(84) Acts of Assembly of Virginia at December session, 1821, chap. 14th. passed 28th February, 1822.

(85) The commissioners who acted on this occasion, on the part of Maryland, were Ezekiel Chambers and James Boyle, Esquires. Chancellor Johnson, who was joined with them in the commission, died when on his journey to the place of assemblage, to the deep regret of his fellow-citizens, amongst whom he was conspicuous for his abilities as a lawyer, and his worth as a man.

the western line from the most western source of that branch, while those on the part of Virginia were limited to Fairfax's location, without regard to the inquiry: *"whether it was or was not so located."* Fairfax's stone is not in fact planted at the extreme western source: and even had it been so situate, it was scarcely consistent with the rights and dignity of Maryland to have entered into an adjustment with commissioners who were thus restricted without regard to the question of right. Maryland having by her Act offered to relinquish all claim to the territory south of the north branch, it was not to be expected after this concession, that she should adopt as the source of that branch, a point determined as such, by her interested adversaries, during the progress of the controversy. The spirit of amity and concession, which had characterised all her pro-
901 ceedings in her repeated efforts to close this controversy, had been met at every step, by one of obstinate adherence, on the part of Virginia, to the full extent of her pretended claims: and it did not become her dignity as a State, to submit herself implicitly to any terms which the latter might dictate. Her commissioners therefore properly insisted, that the whole question, as to the true source of the north branch, should be thrown open for investigation; and this being declined, the negotiation ended.

So rests the controversy even to this day; and the proffer of Maryland to confine herself to the north branch as contained in her Act of 1818, being thus rejected by Virginia, she is remitted to her original rights. Hitherto the course of this State has never contemplated aught but an amicable adjustment; and she has already made every advance towards this, except that of unqualified submission to the demands of Virginia. Every effort has failed; and the inhabitants of our western borders begin to feel more sensibly every day, the consequences of this protracted contest. It is a matter of reproach to the two States that this boundary so extensive and important, should be unsettled to this day; and to Maryland it especially belongs to redeem herself from this reproach, by adopting on the instant, some decisive measures, to bring about its adjustment. If she is prepared to surrender all her claims, and to adopt the location of Virginia, her border citizens may well say: *"If it were done, when 'tis done, then it were well it were done quickly."* If, on the other hand, she intends no such surrender, it is full time to rise in vindication of her rights. In the progress of this contest, the conduct of Virginia towards her, has not been characterised by that generous and liberal spirit which has been so conspicuous in her other transactions. Our citizens would deeply regret the necessity of an adversary proceeding against a sister State, which has held so high a place in our affections; yet in reviewing the conduct of our State, they will find no cause for censure. As to the *chartered* extent of Maryland, there can be little room for doubt. *"The first fountain of the Potomac"* is evidently a descriptive term intended to designate the most westerly source, and applies to the south branch, the source of which lies considerably west of that of

Present policy of Maryland.

the north branch. The extent of territory lying between the
902 two branches, is estimated at *half a million of acres*, including some of the most fertile lands of Virginia. In the event of an adversary proceeding, the claims of Maryland will of course extend to her chartered limits; and the sovereignty over this extensive country; will be the high prize for the victor. The citizens of our sister State, will perhaps smile at pretensions so extensive; yet that they were once well founded can scarcely be doubted, and if so, it will be difficult to show in what way they have been lost. If this be admitted, Virginia can rest her claims only upon prior occupancy and long continued possession; and these will avail her but little in such a case as the present.

Extent of her present rights.

By some the opinion is maintained, that as between independent states or nations, one cannot acquire a title to the domain of the other merely by prior occupancy. In the letter of Mr. Cooke above given, it will be seen that he adopts this doctrine, and asserts broadly, "that if the claim of the State be well founded in its origin, no lapse of time nor continuance of possession on the part of Virginia can bar that claim." The contrary opinion is maintained by Vattel: and is probably the correct doctrine as there explained and restricted. (86.) The doctrine of prescription can only apply to a case of clear and unequivocal abandonment of possession, on the one part, sustained by proof of long, undisputed and uninterrupted adversary possession by the other; and this has never been the character of the Virginia possession. The claim was disputed from its very origin, and the territory was occupied under circumstances from which no inference of acquiescence, on the part of the proprietary of Maryland, can fairly be drawn. From the year 1753 to the revolution, the proprietary and his government continued to assert the Maryland claim, and were restrained from making grants of the disputed territory, only through apprehension of the interference of the crown, and because of the adjustment between the crown and Lord Fairfax. And if any doubts could arise from the possession of Fairfax, anterior to the revolution, they are all removed by the constitution of Virginia adopted in 1776, which in its 21st Article, after making certain reservations as to the navigation and use
903 of the Potomac and Pocomoke, &c., expressly cedes and confirms to the State of Maryland: *"all the territory contained within its charter, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which may at any time heretofore have been claimed by Virginia."* Thus then at the revolution, by the express concession of the State of Virginia, the claims of Maryland to her charter limits existed in their full force; and are sustained by an express surrender of all counter claims which Virginia might have. The reservations made by her, have all been gratified by the compact of 1785: and the claims of Maryland, so far as they rest upon her charter, are therefore doubly armed. From that period to the present, it will be apparent, from the review of the transactions of the two States already presented, that the claim

(86) Vattel, Bk. 2d, chap. 11th, sec. 147 to 151.

of Maryland has never been relaxed, except by an offer to compromise, which was not accepted, and therefore cannot in any wise affect her right: and that there is nothing in the character of the Virginia possession, from which an abandonment of this claim can reasonably be presumed.

If, then, her rights under the charter retain their original vigour, unimpaired by the lapse of time or the occupancy of Virginia, the Constitution of the United States appears to present remedies, by which the extent of those rights can be readily determined. The claim of Maryland, as the successor to the proprietary rights, extends both to the right of soil and the jurisdiction; and it seems to be now well settled, that where there is a controversy between States involving the right of soil, the Supreme Court of the United States has original jurisdiction over it, and one State may in that court enforce such a right against another State of the Union. (87.) It has been doubted whether upon such a right as that of mere sovereignty or jurisdiction, a State could proceed at law; but even in such a case, it has been held that there is at least an equitable remedy by bill praying to be quieted as to the disputed boundaries. (88.) Besides this direct mode of bringing the question to an issue, there is also an indirect mode of producing a decision of it, which would eventually be equally as efficacious. It is but necessary for the State of Maryland to make a grant within the disputed territory, upon which a suit could immediately be instituted against those claiming it under a Virginia grant; and the question of superior right to grant would at once come up. It being then a case of conflicting claims under grants of different States, it might be at once translated to the proper Circuit Court of the United States; and thence (if of sufficient value,) to the Supreme Court for final determination. (89.) These are the modes of proceeding open to Maryland, and if she still retains, and intends to adhere to her original claim, she should be prompt in the prosecution of it. All further hopes of obtaining it by concession are at an end; and whatever course she may resolve to adopt, should be at once determined upon. *What the boundary line may be*, is not a matter of such moment to her citizens, *as that it should be definite and undisputed*. In any issue of the contest, it would be the duty of Maryland to confirm all the anterior grants from the proprietaries of the neck. No attempt would be made to disturb titles so derived; and the contest would be mainly for the sovereignty of the territory. Thus respecting and protecting private rights, her claim would be stripped of all its harshness; and, if successful, whilst it enlarged and enriched her territory, would be a monument of her justice.

Remedies open to her.

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(87) 3d Dallas, 412. 4th Dallas, 3.
(88) Same.
(89) Constitution of the United States, Article 3d, section 2d, and Act of September 24th, 1789, section 12th.

905 EXHIBIT F.

N. 126.

Resolution Appointing a Select Committee of Five, Relative to the Southern and Western Limits of this State.

Resolved, That a committee consisting of five be appointed to enquire and report to the senate, what were the true southern and western limits of the province of Maryland, according to the original charter from the King of Great Britain to Lord Baltimore.

Resolved, That said committee be instructed to enquire and report to the senate, whether the southern and western limits of the country as defined in the original charter from the King of Great Britain to Lord Baltimore, ought now to be taken, and acknowledged as the southern and western limits of this State, and, if not, to ascertain and report to the senate, what are the true southern and western limits of this State.

Resolved, That said committee be instructed to enquire and report to the senate, what is "The first fountain of the Potomac," as mentioned and intended by the original charter from the King of Great Britain to Lord Baltimore, as far as said committee may be able to ascertain; and the point at which the meridian for the western boundary of this State ought to start.

Resolved, That said committee be instructed to enquire and report to the senate, whether our sister state of Virginia, has, at any time, by her constitution, or laws, made any recognition of the right of Maryland, to all the territory contained within the original charter from the King of Great Britain to Lord Baltimore.

Resolved, That said committee be instructed to enquire and report to the senate, whether any survey can be found in the archives of this State; which was made to ascertain the courses of the south and north branches of Potomac, with a meridian through the
906 heads of each branch, to determine their relative extent to the west; and if any such can be found, to report to the senate, what time, and by whom made; and what evidence it affords, to illustrate and establish "The first fountain of the Potomac."

Resolved, That said committee be instructed to enquire and report to the senate, the nature of the dispute, touching these limits, between Frederick Lord Baltimore and Lord Fairfax, up to the close of the revolution, and what steps have been taken since, from time to time, by this State, and our sister State of Virginia, to settle our southern and western limits—specifying particularly, the different periods of negotiation, the result of each, the present condition of the dispute; and whether it is necessary for the peace and security of our people, and the dignity of the State, to have these limits, or either of them, defined; and what step ought to be taken by this State to procure a final adjustment thereof.

No. 128.

Report of Special Committee, and Resolutions Relating to the Southern and Western Limits of this State.

The committee to whom sundry resolutions were referred relative to the southern and western limits of this state, have had the same under consideration, and respectfully report:

That they have arranged their enquiry in order as proposed by each resolution, beginning with the first, as best calculated to keep in view the object of the senate, and to present to the consideration of both branches of the legislature, the whole mass of facts and circumstances in consecutive form, starting from the root of the title of Maryland to its domain through all adversary or other pretensions.

1st. Your committee have been instructed to inquire and report to the senate "what were the true southern and western
907 limits of the province of Maryland, according to the original charter from the king of Great Britain, to Lord Baltimore."

By an examination of the third section of that charter, your committee find the grant to Baltimore so defined by natural boundaries, leading from one point to another all round the grant, that it has produced in your committee no little surprise to learn from the early history of the province, the legal perplexities in which the proprietary was involved, concerning them. They were indelible signs of nature, skirted along the whole grant, and were doubtless intended to put out of the reach of all controversy the intention of the grantor in carving out of his immense domain a territory for Lord Baltimore. The third section declares that it was intended to contain "all that part of the Peninsula, or Chersonese, lying in the parts of America, between the ocean on the east, and the bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory or head land called Watkins' Point situate upon the bay aforesaid, near the river Wighco on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the equinoctial, where New England is terminated; and all the tract of that land within the metes under written, (that is to say,) passing from the said bay, called Delaware bay, in a right line by the degree aforesaid, unto the true meridian of the first fountain of the river of Potomac, thence verging towards the south, unto the further bank of the said river, and following the same on the west and south unto a certain place called Cinquack, situate near the mouth of said river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called Watkins' Point." Looking at this horoscope of Baltimore's charter, in search of its southern and western limits, we are cautiously told to begin on that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the equinoctial, and are

directed to pass from the said part of said bay, which lieth under the said degree, and by the said degree unto the true meridian of the first fountain of the river Potomac, although it is probable
908 but little was known of the upper fountains or tributaries of the Potomac, to the king of Great Britain, by actual observation and inspection, made by his agents, yet no doubt it was well ascertained or believed, that it flowed from the west, and its courses and first fountain with the greatest relative extent to the west, were intended to be sought for, as your committee believe, by actual survey due west along the degree aforesaid, until a true meridian could be got to strike the first fountain of the river Potomac, having the greatest extent to the west, without regard to any branch or tributary of that river. For notwithstanding the confines of the grant were sufficiently guarded by natural boundaries and signs, it was evidently intended to be better defined at some other time by ascertaining their precise situation. Your committee believe that it will clearly appear from a subsequent part of this report, that the stream commonly known by the name of the south branch of the Potomac, flows from the first fountain having the greatest extent to the west, and is indeed Potomac proper, and the north branch is but a tributary of that noble river. Not knowing exactly what would be the effect of the calls of Baltimore's charter, the King abundantly explained them, as well as all other words for the benefit of his favorite in the 22d section, in which all his courts and judicatories are instructed to give the whole grant such interpretation as should be most beneficial and profitable to the grantee. And by starting the meridian so as to strike the first fountain of the South Branch, would have increased the proprietaries domain, according to an estimate of the late William Cooke, four hundred and sixty two thousand four hundred and eighty acres of land. If therefore the South Branch of the Potomac, by actual survey, should have been found not only flowing from the first fountain having the greatest relative extent to the west, but actually yielding to Baltimore an increased extent of domain of four hundred and sixty-two thousand four hundred and eighty acres of land more than he could have obtained by running a meridian to the first fountain of the North Branch, your committee believe it is scarcely possible for the human mind to doubt, that the whole country north of the South Branch, was originally included in Baltimore's charter. If this should be demonstrated by the facts
909 submitted in this report, it will follow that the meridian for the western limit of the charter, ought to have struck the first fountain of the South Branch, it having the greatest relative extent to the west, thence verging towards the south unto the further bank of said river, and following the same for the southern limit on the west and south.

2d. In regard to the information sought by the second resolution, your committee believe and respectfully report, that the southern and western limits of the country, as defined by the original charter from the King of Great Britain to Lord Baltimore, ought now to be the southern and western limits of this State, *if viewed as a strict matter of right in an adversary proceeding against our sister State of Virginia.* The right to grant the eminent domain by the

King of Great Britain to Lord Baltimore, at the date of the charter, was incontestible, and although it was the source of some dissatisfaction amongst the colonists of Virginia, from causes not necessary to repeat in this report, yet it was a matter conceded on all hands long before the revolution, that the grantee was entitled to all the domain included in his true legitimate boundaries, as mentioned and intended by the charter, wheresoever they might be found; and there can be no question that the same right of domain within the true limits of the charter, passed to this State after the revolution. This as far as your committee have been able to discover, was at no time doubted on the part of Virginia. And so far as your committee have been able to learn, this State has done nothing to divest herself of this domain. It will appear in a subsequent part of this report, that the planting of the Fairfax stone, was done without any authority from the elder Baltimore, or from Frederick Lord Baltimore. The latter, it appears from the council proceedings of Maryland, instructed his Governor, Sharpe, in seventeen hundred and fifty-three, to "keep a good look out, and prohibit settlements under Fairfax, in the country north of the South Branch," and this State in the convention when our constitution was formed, passed several resolutions more particularly referred to hereafter, amounting to a solemn protest against any claim of Virginia to the
910 country within our chartered limits. Nor is there any well-founded claim to the country on the part of Virginia, by usucapation and perscription known among nations. Usucapation is the acquisition of domain founded on a long possession, uninterrupted and undisputed, from which there may be a presumed desertion. Such principles would suppose that this State had entirely neglected that which belongs to her, and had left it with all the appearances of a thing utterly abandoned. But every important event in our history touching this subject shows a continual claim on our part down to the year eighteen hundred and eighteen, when certain matters of compromise were offered, but not being accepted, remitted this State to her original rights.

3d. In regard to the duty devolved upon your committee by the third resolution, to ascertain what is the first *fountain* of the Potomac, it is scarcely necessary to remind the Senate, that the true boundary between this State and the State of Virginia has always depended upon that single question, which could have been settled at any time by actual survey of the waters, if made in a spirit of sincerity and candor by both States, and with such an interpretation of the charter as was manifestly intended. Your committee are of opinion, that there is a moral obligation upon States, as well as upon individuals, to do justice to each other, and if it was a moral duty on the part of Virginia, at any time promptly and with good faith to settle that single question, by all the means within her power, that duty and moral obligation is yet in force, and cannot be repealed without the consent of both States. Vattel, in his chapter upon the observance of justice between nations, has declared, "that justice is the basis of all society, the sure bond of all commerce. Human society, far from being an intercourse of assistance and

good offices, would be no longer anything but a vast scene of robbery, if no respect were paid to this virtue, which secures to every one his own. It is still more necessary between nations, than between individuals, because injustice produces more dreadful consequences in the quarrels of these powerful bodies. All nations are therefore under a strict obligation to cultivate justice towards each other, to observe it scrupulously, and carefully to abstain from every-
911 thing that may violate it. Each ought to render to the other what belongs to them, to respect their rights, and to leave them in the peaceable enjoyment of them." *Vattel, Book 2d, chapter 5.*

There are some conquerors who aspire after nothing more then extending their dominions, but it was not expected that states who struggled together through the pangs of a revolution, would, at any time, endeavor to over-reach and out bargain each other in the settlement of their limits, when the whole matter to be first ascertained was nothing more than the first fountain of a river flowing from a mountain, which could be seen by any one sincerely disposed to understand the whole truth of the matter. To the doctrines so well settled and defined by Vattel, all civilized communities, as separate states, without any common bond of union, are bound to yield; and much more two states, being neighbours, who are cemented by that bond of union, which holds together our whole confederacy.

4th. In regard to the information sought by the fourth resolution, your committee further report, that they have examined the constitution of Virginia, and find the territorial limits of this State referred to, in the twenty-first section, in the following words: "The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pocomoke, with the property of Virginia shores or strands bordering on either of the said rivers; and all improvements which have been or shall be made thereon." The King of Great Britain being entitled to the whole eminent domain of the country, granted a part of it to Lord Baltimore, by his charter. This right of the King was incontestible, and Virginia had no claim to any territory within the limits of Baltimore's charter, but inasmuch as there had been some dissatisfaction by some individuals in Virginia, in regard to the charter, it was friendly and proper for her, at that time, to make this express recogni-
912 tion of our limits, and had a tendency to remove all difficulty or misunderstanding that could possibly arise on the subject, through the perils of the revolution. In the same section of the Virginia constitution, it is declared, that "the western and northern extent of Virginia, shall, in all other respects, stand as fixed by the charter of King James the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the courts of

Great Britain and France, in the year one thousand seven hundred and sixty-three." The claim of the English to the continent of North America, was founded upon the discovery of Cabot in the year fourteen hundred and ninety-eight; and the name Virginia was, at one time, applied by the English to the whole continent; and sundry companies had from time to time, before the revolution, been chartered with permission to plant colonies within the limits of Virginia, and for other purposes. Amongst other charters, that of King James the first, mentioned in this article, had been granted, but was afterwards, as well as all other charters of that kind, annulled; and the rights granted by them revested in the crown, and before the date of Baltimore's charter, Virginia became a royal government. It is therefore clear that the ground taken by Virginia, in the twenty-first article of her constitution, was not tenable, except as a recognition of the Maryland claim. The general convention of delegates and representatives, who framed the constitution of Virginia, met at Williamsburgh on the sixth day of May, seventeen hundred and seventy-six, but a short time before the declaration of independence, when Virginia was in her first love as a sister state, it was fit and proper for her to make such a recognition. But her reservation in regard to the use of the rivers Potomac and Pocomoke, were wholly gratuitous; and the two states afterwards, by compact, on the twenty-eighth day of March, in the year of our Lord one thousand seven hundred and eighty-five regulated and settled the jurisdiction and navigation of those rivers, and that part of Chesapeake bay within the territory of Virginia. If then Virginia had no right to any territory within the limits of Baltimore's charter, and made the recognition purely from abundant caution, and to prevent quarrels and misunderstandings with her sister Mary-
913 land during the revolutionary struggle, it is nevertheless a recognition of our territorial limits within the charter, to the utmost extent of our true boundaries, when fully ascertained and defined. Or if she had any possible imaginary right to any territory within the limits of our charter, it was all absolutely ceded and released by her constitution to Maryland, although becoming subject to the compact made afterwards in seventeen hundred and eighty-five.—But even in the struggle of the revolution, Maryland did not forget to enter her solemn protest against the proceedings of Virginia, in regard to her territorial limits, and on the thirtieth of October, seventeen hundred and seventy-six, in the Maryland Convention which met to form our constitution, the twenty first article of the constitution of Virginia, referred to in this report, was taken into consideration, and the following resolutions as a protest, were unanimously adopted.

"Resolved unanimously, that it is the opinion of this convention, that the State of Virginia hath not, any right or title to any of the territory, bays, rivers, or waters included in the charter granted by his Majesty Charles the first, to Cæcelius Calvert, Baron of Baltimore."

"Resolved unanimously, that it is the opinion of this convention, that the sole and exclusive jurisdiction, over the territory, bays,

rivers, and waters, included in the said charter, belongs to this state, and that the river Potomac, and almost the whole of the river Pocomoke, being comprehended in the said charter, the sole and exclusive jurisdiction over the said river Potomac, and also over such part of the river Pocomoke, as is comprehended in the said charter, belongs to this State, and that the river Potomac, and that part of the Chesapeake bay, which lies between the Capes and the south boundary of this State, and so much thereof as is necessary to the navigation of the rivers Potomac and Pocomoke, ought to be considered as a common highway free for the people of both States, without being subject to any duty, burthen or charge, as hath been heretofore accustomed."

"Resolved unanimously, that it is the opinion of this convention, that the very extensive claim of the State of Virginia to the back lands, hath no foundation in justice, and that if the
914 same or any like claim is admitted the freedom of the smaller States, and the liberties of America, may be thereby greatly endangered."

It is manifest that Virginia had no authority to give, take away, or reserve, any portion of the country which was within the limits of Baltimore's charter. But that part of her constitution may be fairly and properly construed to be an express recognition of the right of Maryland to all the territory contained "within the original charter from the King of Great Britain to Lord Baltimore." The compact of seventeen hundred and eighty-five, between the two states was made to regulate and settle the jurisdiction and navigation of the Potomac, leaving the single question of the first fountain of that river open, to be settled by some other negotiation. It is indeed, matter of great surprise to your committee, that the Maryland commissioners, at the time of that compact, did not make the decision of that single question preliminary to every other arrangement.

5th. In obedience to the request of the senate, expressed in the fifth resolution, your committee, upon inquiry, found in the Land office of this state, a survey of the two branches, which appears to have been made by Colonel Cresap, some time, in the year of our Lord one thousand seven hundred and seventy-one. The survey was evidently made with the knowledge and approbation of the proprietary, and probably under his express direction; but for what purpose it does not distinctly appear. But if made with fidelity, of which there is no reason to doubt, from the well known and established character of Colonel Cresap, it illustrates, and has established beyond all reasonable doubt, that the South Branch flows from the first fountain of the Potomac. "It presents a very accurate view of the courses of the two branches, through the heads of which meridians are drawn, for the purpose of determining their relative extent to the west. From the year seventeen hundred and fifty-three, it appears to have been continually held on the part of Maryland, that the South Branch was the most western source;" and therefore the first fountain: "But the survey of seventeen hun-
915 dred and seventy-one appears to have been the first actual examination and survey of the two branches, which was

made with this view. The papers connected with the settlement of the expenses of the survey, shew that it was made under the direction of the proprietary government; and it seems probable that it was made, both for the purpose of informing the proprietary as to the true location of the branches, and of furnishing a basis for any application which might be made by him to the King in Council."—M'Mahon's History of Maryland, vol. 1st, page 57. Your committee invite the members of both branches of the legislature to examine this survey. Though the surveyor who made it, and the contending Lords whose interests were involved in it, have long since slept with their fathers, this survey yet speaketh in language sufficient to remove every involution of darkness which has at any time concealed the true and single question. "Which is the first fountain of the river Potomac?" Both branches are delineated on the plat with the meridians through the head of each; and the meridian through the head of the South Branch is near thirty miles west of the one through the head of the North Branch.

6th. In regard to the information sought by the sixth resolution, your committee further report—That they have examined the nature of the dispute touching the southern and western limits of the Maryland charter between Frederick Lord Baltimore, and Lord Fairfax, up to the close of the revolution, as well as the other matters referred to in that resolution. Your committee having already distinctly adverted to the origin of Lord Baltimore's charter, and the common call in that charter for the first fountain of the river Potomac, beg leave also to make a brief reference to the origin and calls of the letters patent issued for lands in the Northern Neck of Virginia to certain persons from whom it passed into the Fairfax family. In the first volume of the revised code of Virginia, these letters patent are recited; by which it appears that the grantors of the grant under whom Fairfax claimed, were Lord Hapston, Lord Jermyn, Lord Culpepper, Sir John Berkeley, Sir William Morton, Sir Dudley Wyatt,
and Sir Thomas Culpepper; and the territory granted was,
916 "all that entire tract, territory or parcel of land, situate, lying
and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough, or Potomac river; the courses of the said rivers as they are commonly called and known by the inhabitants, and the descriptions of those parts, and Chesapeake Bay." The title having passed by the death of some of the proprietors, and by purchase from others of them, to Henry Earl of St. Albans, John Lord Berkeley, Sir William Morton, and John Treatherway, Esquire, they surrendered the original grant, for the purpose of receiving a new one for the same territory, for which they afterwards obtained letters patent. The title to the whole having vested in Thomas Lord Culpepper, a new patent was granted to him by King James the second, and "from him it descended to his daughter and only child, who was married to Lord Fairfax, and thus passed into the Fairfax family." The grant of domain to Lord Baltimore, calling for the first fountain of the Potomac, and the grant of the right of soil afterwards, "of all that entire tract, territory or parcel of land, situate, lying and being in America,

bounded within the heads of the rivers Rappahannock and Potomac," were not at all inconsistent, nor could they by any rational construction clash with each other. The grant under which Fairfax claimed, having nothing upon the face of it that could excite the jealousy of Baltimore, and being much engaged with the Penn's, in settling his northern limits it does not appear that he thought anything about it at first; and no adversary or other proceedings were at any time instituted by Fairfax or those under whom he claimed, against Baltimore, to settle any dispute, in regard to the division of the grant of the Northern Neck, and that of the Maryland charter. There was a dispute between Fairfax and the Governor of Virginia, relative to conflicting territorial claims which terminated by proceedings to which Baltimore was no party; and of the existence of which he and his government appear to have had no knowledge before they were terminated. Mr. M'Mahon in his History of Maryland, says it appears in seventeen hundred and thirty-three, a petition was preferred by Fairfax to the King in Council, praying that a commission might issue for running and marking
917 the dividing line between his grant and the Province of Virginia; and that the commission was accordingly issued, and the survey made and reported in August, seventeen hundred and thirty-seven. In December, seventeen hundred and thirty-eight, these reports were referred to the consideration of the council for plantation affairs, by whom a report was made in seventeen hundred and forty-five, which determined the head springs of the Rappahannock and Potomac, and directed that a commission should issue to extend the line. This report was confirmed by the King in Council, and the line being adjusted in conformity to it, an act was passed by the General Assembly of Virginia, in the year seventeen hundred and forty-eight, which adopts the order in council, and confirms all previous grants made by the Crown, of land lying within the limits of the Fairfax grant."—The judgment of the King in form, is not known, except so far as it is recited in the Virginia act of seventeen hundred and forty-eight: that act recites several things in the following words: "*Whereas*, in the late dispute and controversy touching the limits and boundaries of the several letters patent granted by their late Majesties King Charles the Second, and King James the Second, unto the ancestors of the Right Honorable Thomas Lord Fairfax, it hath been adjudged and determined by his present majesty in Council, that the said letters patent do include all that tract or territory of land between the rivers Potomac and Rappahannock, and the line now marked from the head spring of the said river Potomac to the head spring of the Rappahannock, commonly called the Conway, in which said tract or territory of land as is before described, many adventurers and planters have taken up great quantities of land, and obtained grants and patents thereof from the Crown under seal of this colony; *And whereas*, the said Thomas Lord Fairfax hath consented before the King in Council, that the several grants and patents made by the Crown of the lands included in the boundary aforesaid, should be confirmed to the several grantees, their heirs and assigns." The

judgment of the King as recited in this act, although it is not so precise in the location, as the letters patent to Fairfax, ought nevertheless to be taken, as intending to fix the limits according
918 to the letters patent. The judgment says, "that the said letters patent do include all that tract or territory of land between the rivers Potomac and Rappahannock:" the letters patent, "all that entire tract, territory, or parcel of land, situate, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough or Potomac river." Now it is fair to presume that the King intended nothing more than "the heads of the rivers Rappahannock and Quiriough or Potomac river," when he used the words, "between the rivers Potomac and Rappahannock." At all events in the opinion of your committee it gave no authority to plant the Fairfax stone on the North Branch, where it is now found. That was an after thought, and a contrivance by two interested parties, who had previously made litigation before the King for their mutual benefit. But it seems this act of seventeen hundred and forty-eight, intended to make the King declare in his judgment, that the boundaries of the several letters patent granted unto the ancestors of Fairfax extended to all that tract or territory of land between the rivers Potomac and Rappahannock, to enable Virginia and Fairfax to plant a stone at the head of the North Branch, when by the original grant itself it was limited to "all that entire tract, territory or parcel of land, situate, lying and being in America, and bounded within the heads of the rivers Rappahannock and Potomac." It is plain such a judgment with the construction given to it by Virginia and Fairfax was not authorized by the original letters patent, which were better defined and understood. But being in a controversy of Virginia on one side, who was interested in extending her jurisdiction, and Lord Fairfax on the other, who was interested in the increase of his lands, it is not at all surprising that it was so adjusted. It enlarged the jurisdiction of Virginia, and Fairfax gained the whole country between the South and North Branch. It appears also, by the act referred to, that Virginia and Fairfax ran a line by consent, from the head spring of the said river Potomac to the head spring of the Rappahannock; beginning no doubt, at the place on the North Branch which has since been known by the Fairfax stone. The two interested parties, by a law suit which appears to have
919 been carried on for their mutual benefit, got the King to decide that it shall be "between the rivers Potomac and Rappahannock," instead of "the heads of the rivers Rappahannock and Potomac," and then ran a line making the head spring of the Potomac on the North Branch, where the Fairfax stone is now found. This was a plain usurpation of the rights of the elder Baltimore, being obtained through a decision in a cause to which he was no party, and of which he had no notice, and which afterwards received the protest of his successor, which was not made by his predecessor in consequence of his death. Some time in the year seventeen hundred and forty-eight, a land office for granting lands in the neck was opened by Fairfax, after the *ex-parte* settlement of

the boundary line between him and the government of Virginia was made, and in which the elder Baltimore had no part. From this office grants were issued which extended so far to the "west as to raise the question of location of the head of the Potomac," which caused Frederick Lord Baltimore, after his accession to the right of the Maryland domain, to turn his attention "to its western limits," and "in his instructions to Governor Sharp, which were presented by the latter to his council in August, seventeen hundred and fifty-three, he alludes to the Fairfax grant, and remarks, that he had been informed that the government of Virginia had undertaken to ascertain the limits of his charter; and that the commissioners who had been appointed for this purpose, instead of stopping at the South Branch, which runs from the first fountain of the Potomac, had gone even to the North Branch; that if any such adjustment was made, he had no knowledge of his predecessor being a party to it, and therefore concluded by it." He therefore directed the governor "to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise Lord Fairfax of his desire to adjust that boundary with him; and he at the same time commands him to keep a good look out, and prohibit settlements under Fairfax in the country north of the South Branch.—These instructions being laid before the council, in order to a compliance with them, they endeavored to collect in-
920 formation with reference to the relative extent of the North and South Branches of the Potomac, and for this purpose they summoned before them colonel Thomas Cresap, one of the settlers in the western extremity of the state, who was supposed to be familiar with the course and extent of these branches. He accordingly attended at their next session in September, seventeen hundred and fifty-three, and informed them, that in his opinion the South Branch of the Potomac was the longest stream, because it continued, as he thought the longest stream even from its mouth, and ran about sixty miles further in a north-western direction than did the North Branch. Thus informed, the governor addressed a letter to Lord Fairfax, in which after apprising him of the instructions received from the proprietary, he remarks, that the information which he had obtained induces him to believe that there has been some mistake in fixing the fountain head of the Potomac at the source of the North Branch, as the relative length of the two branches, and other circumstances, concur to shew that the South Branch, commonly called 'Wappecomo,' is the main and principal course of that river," and expressed a hope "that Fairfax would concur with him in causing such an examination of the two branches as will put the question to rest." M'Mahon's History of Maryland, page 52, 53. Council Proceedings of Maryland, Liber T. R. and W. S. 12, 13. The historian also refers to Jefferson's Notes on Virginia, page 193, 194. "From this period until the revolution, the existing records of the council and assembly transactions are entirely silent as to this contest, of which an accurate history can be collected only from the records of the English council. Fairfax continued to adhere to the line run from the stone planted

by himself and Virginia; and the Proprietary of Maryland continued to assert his claim to the first fountain, be that where it might."—M'Mahon's History of Maryland.

It is quite clear to your committee, if the American Revolution had not intervened, a collision must have ensued between the grants of Fairfax and Baltimore, which would have brought about an amicable adjustment of boundaries, or forced a determination before the King in Council.—That glorious event in American history, took away this dispute from Fairfax and Baltimore, and
921 vested it in the independent States of Virginia and Maryland; and the former in the very act of forming her Constitution, made an express recognition of all the rights of the latter within the limits of her original charter, and left nothing to be done but an ascertainment of these limits by actual examination and survey. But your committee are constrained to remark, that the virtuous precept which is found in the Constitution of Virginia, has never been followed up by the same frankness and generosity in ascertaining and yielding to us our limits. While Maryland has asked for nothing but a clear ascertainment of her limits as recognized and acknowledged by Virginia, upon terms suitable to the honour and dignity of both states, she has been asked by Virginia to permit the latter to fix beforehand the place of beginning. This is stated with pain and reluctance—but it is a truth that ought not to be concealed. The people of Virginia and the world, should know the wrong done to us by our sister state, who acted so just when the revolution was in embryo. Soon after the revolution, it became the duty of this state, with as little delay as possible, to dispose of the reserved lands westward of Fort Cumberland, to fulfill engagements made to the officers and soldiers of the Maryland line, which had been in the service of the United States during the war; and an act of the legislature of Maryland was therefore passed at November session seventeen hundred and eighty-eight, to sanction the proceedings of commissioners previously appointed to locate certain lots of land westward of Fort Cumberland for the benefit of these officers and soldiers. So urgent were the claims of these military servants who had lately gone through the heat and burthen of the day of the revolution, that this state could not, without evident injustice, postpone the location of their lands until the settlement of our southern and western limits. The commissioners therefore, to avoid all collision with Virginia, ran a temporary meridian far within our just limits. By the act of seventeen hundred eighty-eight, chapter forty-four, section 15, it is provided, as a protest your committee presume, "that the line to which the said Francis Deakins has laid out the said lots, is in the opinion of the general assembly, far within that which this state may rightfully claim as its western boundary; and that, at a time of more leisure, the con-
922 sideration of the legislature ought to be drawn to the western boundaries of this state, as objects of very great importance."

By this reservation, this state cautiously precluded all idea of abandonment of our claim, or of yielding at any time to unjust pretensions on the part of Virginia; and embracing the first moment

of leisure, in the year seventeen hundred and ninety-five, opened again a door for negotiation. In that year by a resolution of the general assembly, three distinguished gentlemen, Messrs. Pinkney, Cooke and Key, were appointed commissioners on the part of this state, to meet such persons as the state of Virginia should appoint to adjust and settle by compact the southern and western limits of this state, and to fix the dividing lines and boundaries, and to settle upon just terms the claim of either state within the limits of the other. Mr. Pinkney being called away on a foreign mission, and Mr. Cooke having refused to act, in seventeen hundred ninety-six, Charles Carroll of Carrollton, and J. T. Chase, Esquires, were appointed in their stead. Mr. Key soon afterwards removed from the state, and Messrs. Carroll and Chase refused to accept; and thus the state had no commissioners until eighteen hundred and one. In that year, by a resolution of the general assembly, the power to appoint commissioners was given to the governor and council. The governor and council, under the authority given them, appointed Messrs. Duvall, McDowell and Nelson, commissioners; and a correspondence took place between Governor Mercer of Maryland, and Governor Monroe of Virginia. But neither the first letter of Governor Mercer nor the reply of Governor Monroe, can be found. There is, however, a letter from Governor Mercer, dated June 5th, 1802, to the governor of Virginia, in which there is an acknowledgment of the receipt of a letter from the governor of Virginia upon the subject of our southern and western limits, which shows that there was a correspondence under the resolutions of eighteen hundred and one. By the letter from Governor Mercer of June 5th, 1802, it appears that Governor Monroe had expressed surprise at being informed of the pretensions of Maryland, and he is referred for the information of himself and the legislature of Vir-
923 ginia, to the resolutions of seventeen hundred and ninety-five, and to a letter of Governor Stone which was written immediately after the passage of these resolutions, as well as to the letter of Governor Brooke of Virginia, in reply to him. From Governor Mercer's letter, it appears that the legislature of Virginia passed an act to appoint commissioners to meet those appointed by Maryland, but limiting their proceedings to a settlement of the western line. In this correspondence, Governor Mercer informs Governor Monroe that no measures could be adopted to ascertain the western boundary between the states, until it should be first determined "whether the North or South Branch is the main branch of the river Potomac." Maryland had proposed the final adjustment of our southern and western limits, which were evidently unsettled, but Virginia offers to settle the western line alone. She evaded, as she has endeavoured to do ever since, the true question and place of the first fountain, the only matter in dispute; while Maryland, bold and confident in the merits and justice of her claim, went upon the common call in her charter. But it is plain upon principles of justice and right, that Virginia could gain no advantage, even by an attempt to settle the western line first, unless she demands of us to abandon our charter. By the charter, the western

line was to be known by passing from the said bay, called Delaware Bay, in a right line by the fortieth degree of north latitude from the equinoctial, unto the true meridian of the first fountain of the river of Potomac. What that first fountain is, as intended by our charter, Virginia very well knows, but was not willing to ascertain. The charter goes further and says, after striking the first fountain, "thence verging towards the south unto the further bank of the said river and following the same on the west and south," &c. Now it is evident if the western limit of this state is at any time honestly settled, it must of course settle our southern boundary, unless indeed Virginia should be permitted to settle our boundaries, according to her own pleasure, without regard to our rights as fixed and ascertained by our charter. The proceedings of the executive of this state under the resolutions of eighteen hundred and one, are particularly referred to in the message of Governor Mercer, of November 6th, 1802. At December session eighteen hun-
924 dred and three, Governor Mercer being a member of the House of Delegates, was chairman of a committee appointed to consider and report upon the matters growing out of the resolutions of eighteen hundred and one. In this report Governor Mercer recommends the running of a provisional line by agreement with Virginia, until further steps could be taken, to ascertain the southern boundary. "This report was not acted upon; and the subject does not appear to have been revived until eighteen hundred and ten, when another resolution was passed similar to that of eighteen hundred and one. From eighteen hundred and ten, the matter slept until it was revived by this state in the act of eighteen hundred and eighteen, chapter two hundred and six. "This state had now become wearried with her efforts to reclaim the territory south of the north branch; and hence this act of eighteen hundred and eighteen, in proposing to Virginia the appointment of commissioners, agrees to adopt the most western source of the North Branch, as the point from which the western boundary shall start. At December session eighteen hundred and twenty-one of the assembly of Virginia, an act was passed, which purported to meet and reciprocate this proposition of the state of Maryland; but, was, in fact materially variant from it. By the Virginia act the commissioners were instructed to commence the western boundary at a stone planted by Lord Fairfax, on the head waters of the Potomac; and thus they were tied down to the old adjustment between Fairfax and the Crown. The Virginia act therefore was entirely different from that of Maryland, which directed the commissioners to begin at the most western source of the North Branch, and did not justify the appointment of commissioners on the part of Maryland. Our act of eighteen hundred and eighteen, expressly directed, that the appointment on the part of this state should be made only after Virginia had embraced its propositions, by the passage of a similar act. But this was overlooked by the executive of Maryland; and commissioners were appointed on the part of both states who assembled on the head waters of Potomac in the summer of eighteen hundred and twenty-four.

M'Mahon's H. of Md. But the instructions of the Virginia
925 commissioners being confined to the Fairfax stone, put an end to all further negotiations. By an act of eighteen hundred and eighteen, the executive of this state had no authority to appoint commissioners until a similar act was passed by Virginia; and as no similar act ever did pass by the latter, the appointment of commissioners by the executive of this state, was premature and unauthorised, although done from patriotic motives. This state therefore is no way committed or obliged to be confined to the most western source of the North Branch, because it being an offer of compromise, and refused by Virginia, Maryland is remitted to her original rights. As, however, the proceedings of this state, under the act of eighteen hundred and eighteen, were intended on our part to settle in an amicable way our southern and western limits, the committee respectfully, refer to the correspondence between the commissioners appointed by both states. At the moment of their assemblage the Virginia commissioners opened their instructions which confined the beginning at the Fairfax stone, which was repelled with becoming energy and decision on the part of our commissioners.

In another part of this report, the committee have fully shewn, that the Fairfax stone, was planted by two interested parties, Virginia and Lord Fairfax, without the knowledge or consent of either of the Baltimores, and by a proceeding to which neither of them was a party. That Virginia in her constitution made an express recognition of our rights within the limits of our charter, without confining us to the Fairfax stone, but evidently intending an ascertainment of these limits according to the true intent and meaning of our charter. It has therefore surprised your committee, that the state of Virginia, so enlightened, just and generous on most other subjects, in this matter of the adjustment of our boundaries, should refuse to meet us upon terms of justice and right, and consistent with the dignity of both states. The offer of our act of eighteen hundred and eighteen, having failed as stated, this state at December session eighteen hundred and twenty-five, passed sundry resolutions, on the same subject, by which the governor and council were authorized
and requested to appoint three commissioners on the part of
926 this state, to meet such commissioners as might be appointed by Virginia, to settle and adjust by mutual compact between the two governments, the dividing and boundary lines between them. And it was provided in one of the resolutions in case of disagreement, between the commissioners appointed by both States, that the executive of this state, should request the governor of Delaware to appoint an umpire. In the month of April next, after the adoption of these resolutions, Governor Kent, transmitted them to Governor Tyler; and in the month of May following, Governor Tyler sent his reply to Governor Kent. It will be found that Governor Kent reminded the governor of Virginia of the anxious desire of this state so often manifested on that subject; Governor Tyler, in his reply, admitted the importance of the matter, and the unsettled condition of the boundaries—but thought it was owing to defectiveness of

powers with which the commissioners on both sides were entrusted. This correspondence was communicated to both branches of the legislature by Governor Kent, at December session eighteen hundred and twenty-six; since which nothing has been done as far as your committee have been able to ascertain. By a petition from some of the citizens of Alleghany county in this state, presented to the general assembly, it appears that the authorities of an adjoining county in Virginia, have assumed jurisdiction over them; and they are now called upon to do duty as citizens and pay taxes in Preston county Virginia. Notwithstanding the opinion of your committee that in a strict legal adversary proceeding against Virginia, the common call of the first fountain ought as originally intended, to start a meridian for the western boundary at the most western source of the South Branch, (and verging towards the south unto the further bank of said river, and following the same for the southern limits on the west and south,) they nevertheless recommend that the whole matter should be left open, for the most friendly and amicable adjustment. Your committee recommended to the consideration of the general assembly, several resolutions.

Resolved by the General Assembly of Maryland, That the governor and council of this state be, and they are hereby authorized
927 and requested, to appoint three commissioners on the part of this state, to meet such commissioners as may be appointed on the part of the commonwealth of Virginia, to settle and adjust by mutual compact, between the two governments, the southern and western limits of this state, and the dividing and boundary lines between this state and the commonwealth of Virginia, and also to settle and adjust as aforesaid, any claim of this state, or of the commonwealth of Virginia, to territory within the limits of either state.

Resolved by the General Assembly of Maryland, In case of disagreement between the commissioners appointed on the part of this state, and on the part of the commonwealth of Virginia, the executive of this state, and of the commonwealth of Virginia, shall request the governor of Delaware, for the time being, to appoint an umpire, who shall be vested with full power to settle the several matters in controversy between this state and the commonwealth of Virginia, hereby confided to the aforesaid commissioners.

Resolved by the General Assembly of Maryland, That the compact or agreement when entered into by the aforesaid commissioners, or in case of disagreement and appointment of an umpire, as hereinbefore provided, the award of said umpire shall be final and conclusive on this state, and the faith of this state, is hereby pledged to make such legislative enactments as may be necessary to secure all rights derived from the state of Virginia, to lands lying within any part of the territory now in dispute between the two states, which shall be adjudged to belong to this state; *Provided, however,* and it is hereby further

Resolved by the General Assembly of Maryland, That nothing herein contained shall have any effect unless the legislature of Virginia shall first provide for the appointment of commissioners on the part of Virginia, to treat with commissioners proposed to be ap-

pointed on the part of this state, and for the appointment of an umpire by the Governor of Delaware in case of disagreement as
928 aforesaid, and shall also pledge the faith of the said state, that said compact of agreement, or umpirage, as the case may be, shall be conclusive on the said state of Virginia; and also that all rights demanded under this state, to lands lying within any of the disputed territory which shall be adjudged to belong to Virginia, shall be respected, ratified and confirmed.

Resolved by the General Assembly of Maryland, That said commissioners and the said umpire, shall, from time to time, make reports of all proceedings had under and by virtue of these resolutions, to the executive of this state, and to that of Virginia.

Resolved by the General Assembly of Maryland, That the governor of this state, be requested to transmit a copy of this report and resolutions, to his excellency the governor of Virginia, to be laid before the legislature of the said commonwealth.

929 EXHIBIT G.

Report of Committee of Maryland Historical Society.

The original boundaries of the Province of Maryland were laid down with unwonted precision in the charter which created it. These were: the fortieth parallel of north latitude; a meridian line running south to the first or most distant foundation of the Potomac ("ad verum meridianum primi fontis fluminis de Patowomack") thence proceeding southward ("deinde vergendo versus meridiem") to the farther or western bank of that river, and following that bank to a specified point at the mouth of the river where it debouches into the Chesapeake; thence by a straight line across the bay to Watkins Point and onward to the ocean, and thence by the ocean and Delaware bay and river to the fortieth parallel.

Md. Charter in Md. Arch. Council, 1636-67.

The only one of these courses that was at all uncertain at the time the charter was granted, was that at the extreme west. The country to the west of the Alleghanies was then altogether unknown. Indeed, for many years the geography of the continent was so little understood, that Herman, in his map (1670), considers the mountains about Cumberland to be the central ridge between the two oceans. The point at which the meridian line was to begin had, therefore, to remain undetermined until it should be found which was the furthest source or first fountain of the Potomac; in other words, which of the branches of that river took its rise farthest from its mouth. This point settled, the spring-head or source of that branch determined the western boundary of Maryland.

In 1649, Charles II, then a fugitive in Holland, granted to Lord Hopton, Sir Thomas Culpepper, and other exiled royalists, a
930 tract of land in Virginia, lying between the rivers Rappahan-

nock and Potomac, and running down to the Chesapeake Bay. Under the commonwealth, this remained, of course, a mere grant on paper; but after the restoration the grantees, or rather their heirs and assigns, proposed to avail themselves of their rights. Certain questions having been raised as to the validity of the original grant, these claimants surrendered their patent, and in 1669 received a re-grant, under the privy seal, of the lands in question. This grant, however, conveyed only a title to the soil, which still remained a part of Virginia, and subject to her jurisdiction. It was not an enlargement of the territory of Virginia, but a grant within Virginia, and necessarily limited by the boundaries of that colony.

Boundary Com. Rep. 85.

Md. Acts, 1832. Res. 128.

The Virginians were violently opposed to this grant, which placed the ownership of a vast extent of territory within two or three hands; and in 1675 they sent agents to England to remonstrate against it, or if remonstrance were unavailing, to buy out the grantees' claims; but without success in either case. By the year 1688 the whole title had vested in Thomas, Lord Culpeper; and James II granted him a new patent for the whole tract. This descended to Catharine, his daughter and heiress, who brought it in marriage to Thomas, fifth Baron Fairfax of Cameron, in the Scottish peerage. Lord Fairfax proposed to reap some advantage from his immense territorial possessions, which were still unsurveyed; and in 1733 petitioned the King for the determination of his boundaries by commissioners. The petition was granted, and six commissioners were appointed, three representing Virginia and three the Crown, who determined the boundaries separating his grant from the rest of Virginia. The grants had all called for lands lying south of the Potomac river; and consequently there was nothing in them interfering with the rights of Maryland. For this reason, probably, Charles, Lord Baltimore, made no attempt to have Maryland represented on the Commission. But when the question arose, which was the Potomac river, or which of the two great branches which unite to form it was the longer, the commissioners (in 1736) concluded that the North Branch was the longer; Maryland, whose territory was at stake, having no voice in the matter.

McMahon, Hist. Md., p. 50.

931

Va. Acts, 1736.

Dinwiddie Papers, II, 351.

In 1745, Thomas, sixth Baron Fairfax, came to America; and on October 17, in the following year, surveyors engaged to run the line in conformity with the report of the commissioners, planted "the Fairfax Stone" to mark the northwestern limit of his grant. In 1748 the Virginia Assembly approved the line run by the commissioners, it was confirmed by the King in Council, and Fairfax opened an office for the sale of lands.

Ibid., I, 19.

Faulkner's Report.

News of these proceedings reached Frederick, Lord Baltimore, and in his first letter of instructions (1753) to his new governor, Horatio Sharpe, he protests against this invasion of his territory, and directs the Governor to look into the matter, and to open correspondence with Lord Fairfax with a view to a settlement of boundaries between them. When these instructions were laid before the Maryland Council, they proceeded to inform themselves about the lands in question and the length of the rivers. They called before them Col. Thomas Cresap, a settler in the extreme west of the province, who knew the country well; and he assured them that the South was the longer branch, running, as he believed, about sixty miles northwest farther than the North Branch.

Md. Archives. (M.S.) Lib. J. R., U. S., page 11.

Ibid., p. 13.

Sharpe also wrote to Fairfax, calling his attention to the fact that the South Branch, according to the best information, was the true source of the Potomac, and proposing that they should unite in determining the correct boundary. Fairfax replied that he was of opinion that it would be to his advantage to have the South rather than the North Branch as his boundary; but that he thought the two governors were the proper persons to settle the question. He apparently believed that what he should gain by the extension of his territory to the west would more than offset what he should lose between the two branches. Colonel Cresap, in the next year, made a survey of both branches, and sent Governor Sharpe a map of his drawing, in which their position and length are pretty accurately laid down.

Md. Arch. Sharpe Correspondence, I, 6, 7.

932

Sharpe, Corr. I, 72.

Sharpe, it is evident, was prepared to take all necessary steps for asserting and securing the rights of Maryland; but the outbreak of the French and Indian war in the next year (1754) prevented further action. We find him writing to the Proprietary in 1756 that "no survey can be safely made within eighty miles of the South Branch by less than a body of 100 or 200 men."

Sharpe, Corr. I, 452,

In 1762 Colonel Cresap wrote in person to the Proprietary confirming his previous statements and adding particulars.

Md. Arch. MS. Calvert Papers.

The treaty of Paris, in 1763, which closed the war, gave an opportunity for a final settlement of the question; but the King, finding it necessary to adjust the boundaries of his colonial possessions, and to carry out his agreement with the Indians, issued a proclamation prohibiting the colonial governments from granting any lands lying west of the heads of rivers flowing into the Atlantic from the west and northwest. About the same time the Proprietary conceived the idea of reserving for himself a manor of 10,000 acres in the western part of the province, and sent out orders that no lands beyond Cumberland were to be granted

Md. Arch. MS. Lib. J. R. & U. S. pp. 379-80.

to settlers until this manor was laid off. These causes combined to prevent settlements in the extreme west of Maryland, which otherwise would have led to a final settlement of the boundary. Governor Eden, however, in 1771 appointed commissioners, of whom Cresap was one, to survey and mark the head of the South Branch. He did so; marked the spot with a stone bearing the letters CLDB, and continued the line northward. On completing his labors, he filed a very accurate map in the Land Office.

Pigman's Rep., 1834.

933

In May, 1774, Mr. Jenifer, the Proprietary's agent, remonstrated against the action of the Board of Revenue, who were opening to settlers the lands of the "Western Reserve," as it was called, telling the Board that while there was no doubt that the South Branch was the true boundary of the Province, yet that it was inexpedient to grant lands in the territory claimed by Fairfax while the Proprietary was waiting an opportunity to bring the whole matter before the King. The Board reply that it is not for them to take any action which may tend to prejudice the Proprietary's claims or imply any doubt as to their validity. "The Proprietary," they say, "has lately been at the expense of running a line to the South Branch; and if the Virginians hear that he doubts about the extension of these limits, it will be an encouragement to them to begin to throw stones." Holding this view, they continued to grant lands in the Western Reserve until October, 1774, when instructions were received from the guardians of the new Proprietary, Henry Harford (a minor), to suspend all further grants of the reserved lands.

Proc. Bd. of Revenue. McMahon.

Thus the question stood at the outbreak of the Revolution. Fairfax still held the northern neck under the royal government of Virginia; and when that colony assumed the position of a sovereign State, he held it under the State government. In 1785, on account of the alienage of Denny Fairfax, devisee of Lord Fairfax, the Virginia Assembly claimed the land as a forfeit; but this claim was not upheld by the Supreme Court of the United States.

McMahon, p. 59.

At the outbreak of the Revolution, then, the question was still unsettled. Maryland claimed her western boundary under her charter, which had never been revoked or broken; and this claim had never been yielded, waived, or compromised. This claim, from the first, was to the farthest source of the Potomac, whichever that might be found to be; and undisputed surveys had shown that the South Branch took its rise from the farthest source, and was therefore the true boundary of Maryland.

1813, 7th Cranch, 607. McMahon.

934

Virginia recognized the equity of Maryland's position, and in her first Constitution, adopted June 29, 1776, inserted an article confirming to the State of Maryland, in the fullest and most explicit manner, all that the latter claimed. The words are:

"The territories contained within the charters erecting the colonies

of Maryland, Pennsylvania, North and South Caro-
Va. Const., 1776, Art. 21. lina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pokomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon."

Though this was full and complete enough, yet the phraseology "ceded" and "released" implied an assertion of rights which Maryland had never admitted. The first Constitutional Convention of Maryland (October, 1776,) was by no means disposed to allow the State to be represented as the recipient of Virginia's bounty; and in order that her position and claims might be perfectly clear, this article of the Virginia constitution was taken into consideration, and the following resolution adopted:

"Resolved, unanimously, that it is the opinion of
Jour. of Convention. this Convention that the State of Virginia hath not any right or title to any of the territory, bays, rivers, or waters included in the charter granted by his majesty, Charles I, to Cecilius Calvert, Baron of Baltimore."

935 After this disclaimer on the part of Virginia and assertion of rights by Maryland, a compact was made between
Hening, XII, 50. Md. Acts, 1785, Ch. I. (Kilty.) the two States, Messrs. Jenifer, Stone, and Chase being the commissioners on the part of Maryland, and Mason and Henderson on the part of Virginia, providing for riparian rights on the Potomac, trespasses, the return of fugitives from justice, etc. This compact was ratified by the legislatures of both States in the same year, and re-enacted in the Virginia codes of 1849 and 1860.

So careful was Maryland, on the one hand, not to seem to waive any of her rights, and, on the other, not to appear
Md. Acts, (Kilty,) 1788, Ch. 44. discourteous to Virginia, who appeared so equitably disposed to her, that when, in 1788, it became necessary to allot portions of the Western Reserve as bounty-lands to soldiers of the Revolution, care was taken to set out the 2,575 allotments in territory north of the North Branch of the Potomac, and running next to "the present supposed boundary of Maryland." Under a resolution of the
Md. Acts, 1788, Ch. 44. Preamble. Assembly in the previous year, Francis Deakin had been employed to survey and plot the lands lying west of Fort Cumberland, and by his plot the bounty-lands were laid out. But to avoid all misconstruction, in the same act the Assembly declared:

"That the line to which the said Francis Deakin
§ 15. has laid out the said lots is, in the opinion of the General Assembly, far within that which this State may rightfully claim as its western boundary; and that at a time of

more leisure the consideration of the legislature ought to be drawn to the western boundaries of this State, as objects of very great importance."

As the Charter of Maryland was clear in the definition of the boundary, and as the Constitution of Virginia had pledged that State to acceptance of the line laid down in the Charter, nothing now remained to be done but to survey and mark the line. In
936 1795, by a resolution of the Assembly, Messrs. Pinkney, Cooke and Key were appointed commissioners on the part of Maryland to meet a commission from Virginia, and adjust the southern and western boundaries of the State. Mr. Pinkney, however, was sent on a foreign mission, and Mr. Cooke declined to act, as did also Messrs. Carroll and Chase, who were appointed in their places. Mr. Key soon afterwards removed from the State.

Vid. Md. Acts, 1831, Res. 128.

In 1801 the Assembly, by a resolution, empowered the Governor and Council to appoint commissioners for the same purpose, and Messrs. Duvall, McDowell and Nelson were appointed on the part of Maryland.

Md. Acts, *ut supra.*

Part of the correspondence between Governors Mercer and Monroe has been preserved, from which it appears that the Virginia legislature appointed commissioners, but limited their powers to a settlement of the western line. In this correspondence Governor Mercer points out that the first step to be taken is to determine on which of the branches the first fountain of the Potomac is to be found. This point once settled, there could be no possibility of dispute as to the western boundary, which was a due north line from that point; nor as to the southwestern boundary, which followed the right bank of the river. This disagreement seems to have prevented further proceedings; and though, in 1803, Governor Mercer, then in the Maryland House of Delegates, recommended running a provisional line until further steps could be taken, nothing came of it. A resolution of similar tenor was passed in 1810, but without results.

Council Rec., 1802, June and November. (See McMahon.)

Md. Acts, 1810, Res. 3.

By the year 1818, Maryland seems to have grown weary of attempts to recover her invaded territory, and the Assembly passed an Act authorizing the appointment of three commissioners to meet commissioners from Virginia, and run a line from "the most western source of the North Branch of the Potomac," due north
937 to the Pennsylvania line. Foreseeing that even this line would inclose lands granted by Virginia, the act provided for the regranting such lands free of charge. This act, however, was not to be operative until the Virginia legislature should have passed an act with similar provisions. Virginia did not act in the matter until 1821, when her legislature passed an act indeed, but one differing materially from the Maryland act. The Maryland act provided

Md. Acts, 1818, Ch. 206.

for the ascertainment of "the most western source of the North Branch of the Potomac" as the beginning of the line; the Virginia act provided for the beginning of the line at the Fairfax stone, which had never been recognized by Maryland, and, in fact, does not mark the farthest source of even the North Branch.

See Md. Acts, 1831. Res. 125.

Commissioners were, however, appointed by both States; but on their meeting, in 1824, the Virginians produced their instructions, which, in themselves, were of a character to bar all further proceedings. The Maryland act, as has been said, instructed her commissioners to ascertain the most western source of the North Branch, and begin the line there; while the Virginia commissioners were instructed to proceed to the Fairfax stone and begin the line there. In other words, the compromise (if we can call so one-sided an offer a compromise) which Maryland, much to her own injury, had offered, was not enough unless she would concede all that Virginia now chose to claim. The Maryland commissioners were not willing, nor had they the power, to make this concession; while on the other hand the Virginians refused, or were not authorized, even to investigate the pretensions of the Fairfax stone to mark the farthest source of the North Branch. The line must begin where Virginia wanted it to begin, or not at all. So all negotiation came to nothing, and the act of 1818 was repealed in 1825. Maryland's offer of a compromise having been thus rejected, she was remitted to her original rights.

Boyle's Rep. Md. Acts, 1824-5. Ch. 195.

938 In 1826 resolutions were again passed by the Maryland Assembly providing for the appointment of commissioners to meet commissioners from Virginia and settle the boundary. In case of disagreement, the Governor of Delaware was to be requested to appoint an umpire. This resolution was not to go into effect until the Virginia Assembly should have provided for a similar commission, and should have pledged the faith of the State to abide by its award. A correspondence between Governors Kent and Tyler followed, but nothing came of it.

Md. Acts, 1825-6, Res. 82.

In 1832 the Maryland Assembly (probably stimulated by the very able discussion of the question by McMahon in his *History of Maryland*, published in the preceding year) appointed a committee to inquire and report—

Md. Acts, 1831, Res. 126.

1. What were the true charter boundaries of the State.

2. Whether the southern and western boundaries as laid down in the charter ought not to be taken as the true boundaries.

3. What is the first fountain of the Potomac as called for by the charter.

4. Whether Virginia had at any time recognized the claim of Maryland to all the land included in the charter.

5. Whether any survey could be found determining the first fountain of the Potomac.

6. The nature of the boundary dispute, the steps that had already

been taken therein, and what further action, in their judgment, should be taken by the State to have the matter finally adjusted.

Ibid., Res. 128.

The committee reported at length. In answer to the first question, they recite and explain the language of the charter. To the second they say that the southern and western bounds as laid

939 down in the charter should be the present boundaries of Maryland, that State having done nothing to divest herself of her rights. They add that the territory claimed is estimated to amount to 462,480 acres. To the third, that the first fountain of the Potomac can easily be determined by survey. To the fourth, they cite the declaration of the Virginia Convention of 1776, and the resolution in the Maryland Convention. To the fifth, they cite Cresap's survey of 1771, on file in the Land Office. In answer to the sixth, the committee review the whole controversy in its various stages. They conclude by recommending a commission similar to that provided for by the resolutions of 1826, "to settle and adjust by mutual compact between two governments the southern and western limits of this State, and the dividing and boundary lines between this State and the Commonwealth of Virginia."

As before, the Governor of Delaware was to be requested to appoint an umpire; and the action of the Assembly was to have no effect until Virginia had provided for a similar commission, and pledged the faith of the State (as Maryland did), to abide by its award.

In 1833 the Assembly of Virginia took action it the matter, but it was action of a peculiar kind. No notice was taken of Maryland's overtures nor of her previous attempts to bring about

Va. Acts, 1833, Ch. 32.

a settlement; the act is worded as if it were a spontaneous and independent movement on Virginia's part. It provides for the appointment of three commissioners on the part of Virginia "to meet such commissioners as may be appointed for the same purpose by the Commonwealth of Maryland, to settle and adjust * * * the western limits of this State, and the dividing and boundary line between this State and the Commonwealth of Maryland, to commence at the Fairfax stone, or at the first fountain of the Cohongoroota, or North Branch of the Potomac."

940 Of course this action, besides being in a high degree discourteous to Maryland, was altogether different from the Maryland resolutions. The latter provided for a settlement by mutual compact, the commissioners to investigate and determine where the true boundary lay; the Virginia act, while preserving the phrase "mutual compact," dictates the place at which the line is to begin, and empowers its commissioners only to meet commissioners from Maryland appointed "for the same purpose," that is, to begin the line at the Fairfax stone, or the head of the Cohongoroota. It is evident that no commissioners appointed under the Maryland resolutions would have power to make this concession; and, in fact, the resolutions themselves could not go into effect. Moreover, no provision was made for umpirage in case of disagreement, nor was

the faith of the State pledged to abide by the award. It was, in fact, a rejection—and a rude rejection—of Maryland's friendly overtures. Indeed the Virginia Assembly evidently anticipated such an interpretation, and provided that in case Maryland appointed no commissioners, the line should be run by Virginia alone, in the way she wanted it.

This rebuff exhausted Maryland's patience. On March 14, 1834, the Assembly passed a temperately worded resolution expressing regret at the rejection of their advances, and instructing the attorney-general of the State to institute proceedings in the Supreme Court of the United States to procure a final adjustment of the southern and western boundaries; but providing that such suit should cease at any time, before final judgment, if Virginia would accept the overtures of 1832.

Md. Acts, 1833, Res. 80.

It seemed now at last that the question must be definitely settled, either by mutual agreement or by judicial decision. But the resources of Virginia were not yet exhausted. Governor Tazewell, of the State, in his message of 1834, adverted to the matter, saying that Maryland had misunderstood the Virginia Act of 1833; that it was really intended as an acceptance, and not a rejection of the Maryland overtures; but that Maryland having thought fit to assume a menacing attitude, it did not now comport with the dignity of Virginia to go into explanations. This message was not officially communicated to the Maryland Legislature, but reached them through the public press.

941

This adroit move was perfectly successful. The matter having been referred to by Governor Thomas in his message, the special committee to whom the subject was referred, report that they see nothing in the matter now brought before them which calls for "any relaxation or change in the course deliberately determined upon at the last session;" and they wish it clearly understood that Maryland "seeks or desires nothing which is not hers of right; and it is necessary for her honor that in a controversy, however amicable, the terms of adjustment shall not be dictated to her." The committee then refer to the Virginia act of 1833, which they declare "not only not in accordance with, but directly repulsive of," the Maryland overtures, and "an undertaking, in truth, by one of the parties absolutely to settle and pronounce against the claim of the other."

Md. Acts, 1834, Res. 99.

But they add, that since they have learned from Governor Tazewell's message that Virginia is willing to agree to terms of adjustment, "if the door of explanation be not closed upon her," they will not, for their part, let "any strained punctilio" stand in the way of an amicable settlement; and they will repeal the resolution of March 14, 1834, direct the attorney general to discontinue proceedings under it, and now stand ready and desirous to settle the long-pending controversy by amicable negotiation.

They were left standing in this amiable attitude. Virginia made no further move.

The provisional line of 1787, or "Deakin's line," as it was called,

had long done duty as a boundary; and as the State granted
942 no lands beyond it, it came to be looked upon—despite the emphatic protest of the Assembly of 1788, as the true boundary line of the State. In process of time the marks became obliterated, and conflicts of title and litigation arose between the holders of Maryland and the holders of Virginia patents for lands in the debatable territory. So in May, 1852, the Maryland Legislature passed an act reciting these facts and requesting the
Md. Acts, 1852, Ch. 275. Governor to open a correspondence with the Governor of Virginia about the matter; and authorizing him to appoint a commissioner, if the Legislature of Virginia would also appoint one, which joint commission should run and mark a line due north from the Fairfax stone, which line, when ratified by both Legislatures, should be the boundary between the States.

As this was an offer to give up the whole matter in controversy, it looked as if the contention was about to be settled at last. Virginia responded by an act of similar tenor in the following year. This, however, was superseded by an act passed in 1857-8 of somewhat different scope. This provided for a joint commission to trace the southern boundary from Smith's Point to the Atlantic Ocean, and the western boundary from the Fairfax stone to the Pennsylvania line.

As the Maryland act of 1852 only empowered the settlement of the western boundary, Mr. T. J. Lee, the commissioner appointed under it, met Col. Angus W. McDonald, on the part of Virginia, to carry out his instructions. By application to the Federal government the services of an experienced engineer, Lieutenant N. Michler, were secured, and a line from the Fairfax stone north to the Pennsylvania line was run and marked. This line, when ratified by both Legislatures, was to be the definite boundary.

Maryland proceeded to ratify Michler's line by an act passed March 6, 1860. Virginia, however, did not proceed
Md. Acts, 1860, Ch. 385. to ratification. In the session of 1859-60 the Virginia Assembly passed two resolutions dealing with the subject. In the first they provided for
Va. Acts, 1859–60, Res. 15. 943 the erection of suitable monuments to mark Michler's line; and in the second they authorized the governor to send an agent to England to collect record and documentary evidence "tending to ascertain and establish the true lines of boundary between Virginia and the States of North Carolina, Tennessee and Maryland." From this it would appear that they considered the boundary question still open. At all events, the ratification required by the act was not given, and Maryland was once more remitted to her original rights, her charter boundary and its acceptance by the Virginia Constitutional Convention.

The outbreak of the war in 1861, and its results, changed the status of the question. The State of West Virginia was separated from Virginia, and in her boundaries (which were designated by county lines) were included those counties in which the disputed

territory lies. It was with West Virginia, therefore, that the question would have to be settled.

The Legislature of West Virginia, at the session of 1868, authorized the Governor to appoint a commission to ascertain the line between West Virginia and Maryland, commencing at the Fairfax Stone, and running north to the Pennsylvania line, and to communicate with the Governor of Maryland, with the view of having a joint survey made. The reason of this action was the fact that Michler's line having been found more favorable to Maryland than the old provisional, or Deakin's, line, West Virginia took the ground that as Virginia had never ratified Michler's line, West Virginia was bound to nothing, and the question was still open.

W. Va. Acts, 1868, Ch. 175.

In 1884 the Maryland Assembly passed a resolution by which, after the statement that there was difficulty in ascertaining the exact location of Mason and Dixon's line, owing to the absence of marks, the members of Congress from Maryland are requested to use their influence to obtain an appropriation from the Federal government "for the purpose of re-surveying and locating the said Mason and Dixon's line by marking said Mason and Dixon's line with suitable stone monuments, with the letters M. and V. between the States of Maryland and Virginia, M. and P. between the States of Maryland and Pennsylvania, M. and D. between Maryland and Delaware, commencing at the Fairfax stone at the head waters of the North Branch of the Potomac, thence running northwardly with Mason and Dixon's line until it intersects the eastwardly line dividing the States of Pennsylvania and Maryland"—and so forth.

Md. Acts, 1884, Res. 5.

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As the action contemplated by this resolution was, on the face of it, impracticable, your committee have not thought it necessary to investigate what further steps, if any, were taken in the matter.

In 1886 a resolution was passed in the Maryland Assembly to the effect that as Michler's line had not yet been adopted by West Virginia, the Governor of Maryland should be requested to bring the subject to the attention of the Governor of West Virginia, asking him to bring it before the Legislature of that State for such action as they might deem fitting.

Md. Acts, 1886, Res. 5.

In the next year the Assembly of West Virginia passed an act confirming Michler's line, but not unconditionally. The act was not to take effect until Maryland should have passed an act or acts confirming all Virginia patents to "lands situate * * * between the new Maryland land hereby established, and the old Maryland line heretofore claimed by Virginia and West Virginia to the same extent and like legal effect as though the said old Maryland line were hereby confirmed and established."

W. Va. Acts, 1887.

This clause introduces a new and important feature in the case. Michler's line differs considerably from the old line, running from the Fairfax stone more to the westward, and giving to Maryland, as your committee are informed, a wedge of terri-

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tory three-quarters of a mile at the base, and thirty-seven miles long. All the lands within this wedge, your committee are informed, are covered by grants from Virginia and a considerable part of them by grants from Maryland. Maryland is therefore called upon to annul her own grants and oust her own citizens from her own acknowledged territory as a condition of getting back a small fraction of the lands of which she has been despoiled.

Sen. Jour., 1888.

In 1888 the question arose again in the Assembly of Maryland. On March 13, a resolution was passed in the Senate to the effect that whereas, while Maryland had ratified the Michler line of 1859, Virginia had never done so; and whereas Maryland had endeavored, without avail, to induce West Virginia to adopt it, or to settle the matter by a joint commission, that State had not complied,—that now the Attorney-General of the State be applied to, to advise the proper remedy.

The Attorney-General replied (March 17) saying:

"In my judgment, no definite settlement of that matter can be accomplished by the appointment of Commissioners, or by negotiations between the Legislatures of the respective States. The controversy has been going on for more than a century, and the State of Maryland has appointed commission after commission to make such adjustment, but all to no purpose." * * *

"In my judgment, therefore, there are but two courses open to bring this long-pending controversy to an end. One is for the State to cause proceedings to be taken against the State of West Virginia in the Supreme Court of the United States for the purpose of procuring a final legal adjustment and settlement of the boundary line between the States; and the other is to submit the matter in controversy to arbitrators appointed by the States."

He concluded by recommending the passage of an act providing for an arbitration, and submitted the draft of such an act.

946 The bill was introduced in the Senate on March 19, and referred to the Committee on Federal relations.

We may infer that upon mature consideration it was judged inexpedient to entrust a decision of so much moment to the State to the judgment of a single man (since this is what an arbitration usually comes to), and when the bill providing for arbitration was reported back to the Senate, it was reconsidered, and the enacting clause stricken out.

Thus stands the question at the present moment. Nothing final has been done since the Virginia Convention of 1776, which acknowledged the right of Maryland to her charter-boundary, and waived all claims that Virginia might have made to any territory within it, incorporating these words, for the greater solemnity, in the Constitution of the State.

In conclusion, your committee beg to offer the following Resolutions:

Resolved, That, in the opinion of this Society, it is highly desirable that the true western boundary of Maryland, which has been so long in dispute, should be equitably and finally determined; and this Society approves the view of the late John V. L. McMahon, that the

best mode of settlement is by a decision of the Supreme Court of the United States.

Resolved, That a copy or copies of this report be transmitted to the members of the Hon. Legislature of Maryland at their next session.

All of which is respectfully submitted.

WM. HAND BROWNE,
ALBERT RITCHIE,
Committee.

[Endorsed:] Supreme Court U. S. October Term 1893. No. 6, Original. The State of Maryland, complainant, *vs.* The State of West Virginia. Answer of the State of Maryland to the cross-bill of the State of West Virginia. Filed October 30, 1893.

947 And afterwards, to wit, on the 26th day of May, A. D. 1894, the following entry appears of record, viz:

No. 6, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. John P. Poe, of counsel for complainant, leave is hereby granted to file general replications of the complainant and defendant herein.

948 And on the same day, to wit, on the 26th day of May, A. D. 1894, the replications were filed in the words and figures following, viz:

949 In the Supreme Court of the United States.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

The State of Maryland, by John Prentiss Poe, its Attorney General, joins issue upon the matters and things in the defendant's answer. So far as the same may be taken to deny or avoid the allegations of the Bill.

JOHN PRENTISS POE,
Attorney General for Plaintiff.

(Endorsed:) The State of Maryland *vs.* The State of West Virginia. Gen'l Replication of the State of Maryland. Mr. McKenney: Please file this general replication. John Prentiss Poe, Attorney General for Maryland.

(Endorsed:) Supreme Court U. S. October Term, 1893. Term No. 6, Original. The State of Maryland, Complainant *v.* The State of West Virginia. General replication of the State of Maryland. Office Supreme Court U. S., Filed May 26, 1894. James H. McKenney, Clerk.

950 In Equity.

THE STATE OF MARYLAND, Plaintiff,
vs.
THE STATE OF WEST VIRGINIA, Defendant.

The State of West Virginia, the plaintiff in the Cross bill filed in this cause, joins issue with the State of Maryland, the defendant in said Cross bill.

GEO. E. PRICE,
Of Counsel for the State of West Virginia.

(Endorsed:) State of Maryland *vs.* State of West Virginia. Defendant's General Replication to plaintiff's Answer to Cross Bill.

(Endorsed:) Supreme Court U. S. October Term, 1893. Term No. 6, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. General replication of State of West Virginia in Cross bill. Office Supreme Court U. S. Filed May 26, 1894. James H. McKenney, Clerk.

951 And on the same day, to wit, on the 26th day of May, A. D. 1894, the following entry appears of record, viz:

952 Supreme Court of the United States.

No. 6, Original, October Term, 1893.

In Equity.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

This day came the parties by their attorneys and the plaintiff filed a general replication to the answer of the defendant to the plaintiff's bill of complaint, and the defendant filed a general replication to the answer of the plaintiff to the defendant's cross-bill; and thereupon by consent of the said parties by their attorneys, either party is authorized to take such testimony as it may desire upon giving at least twenty days notice to the attorneys of the opposite party of the time and place of the taking of such testimony; and by like consent either party is authorized to have such surveying done of the lands, territory or lines in controversy in this cause as it may desire—said surveying to be done by a surveyor or surveyors to be hereafter agreed on in writing by the attorneys for both parties; and said surveyor or surveyors shall return to this Court a report and map or maps of the surveying done by him or them under this order, together with copies of such report and such map or maps. Before proceeding to do any surveying under this order the surveyor or surveyors so agreed on, shall give to the attorneys of

both parties at least twenty days' notice of the time and place of the commencement of such surveying.

May 26, 1894.

953 We agree that the Court may pass the aforegoing order.

JOHN PRENTISS POE,
Attorney General of Maryland, for the State of Maryland.

GEO. E. PRICE,
Of Counsel for the State of West Virginia.

May 26, 1894.

(Endorsed:) Supreme Court U. S. October Term, 1893. Term No. 6, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Order as to taking testimony and surveying & consent thereto. Filed May 26, 1894.

954 And afterwards, to wit, on the 9th day of April, A. D. 1906, the following entry appears of record, viz:

No. 3, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. W. S. Bryan, Jr., of counsel for the complainant, leave is hereby granted to file a stipulation of counsel as to the taking of testimony herein.

955 And on the same day, to wit, on the 9th day of April, A. D. 1906, a stipulation as to taking testimony was filed in the words and figures following, viz:

956 In the Supreme Court of the United States.

No. 3, Original.

STATE OF MARYLAND
vs.
STATE OF WEST VIRGINIA.

It is stipulated and agreed in this case that the taking of the depositions in this case be closed on August 1st, 1906, and that all the depositions heretofore taken, or hereafter to be taken in this case, with all accompanying Plats and Exhibits shall be returned to, and filed in the Office of the Clerk of the Supreme Court of the United States at Washington by the 10th day of August, 1906.

GEO. E. PRICE,
Solicitor for the State of West Virginia.
WILLIAM S. BRYAN, JR.,
Attorney General of Maryland and Solicitor for the State of Maryland.

(Endorsed:) Supreme Court U. S. October Term, 1905. Term No. 3, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Stipulation as to taking testimony. Filed April 9th, 1906.

957 And afterwards, to wit, on the 16th day of April, A. D. 1906, the following order was entered of record, viz:

958 Supreme Court of the United States.

No. 3, Original, October Term, 1905.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. Frederic D. McKenney, in behalf of counsel, and in pursuance of the stipulation of counsel heretofore filed herein,

It is now here ordered by the Court that the taking of depositions in this case be closed on the first day of August, 1906, and that all the depositions heretofore taken or to be hereafter taken with all accompanying plats and exhibits in the case shall be returned to and filed in the office of the Clerk of this Court on or before the tenth day of August, 1906.

April 16, 1906.

(Endorsed:) Supreme Court of the United States. October Term, 1905. Term No. 3, Original. Order. Filed Apr. 16, 1906.

959 And afterwards, to wit, on the 15th day of October, A. D. 1907, the following entry appears of record, viz:

No. 1, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

On motion of Mr. W. S. Bryan, Jr., of counsel for the complainant, It is ordered by the Court that leave be and the same is hereby granted to file, open and publish the testimony and exhibits on behalf of both the parties to this cause.

960 And on the same day, to wit, on the 15th day of October, A. D. 1907, a motion for leave to file depositions, exhibits, maps, &c., was filed in the words and figures following, viz:

961 Supreme Court of the United States.

No. 1, Original, October Term, 1907.

THE STATE OF MARYLAND
v.
THE STATE OF WEST VIRGINIA.

And now comes the complainant The State of Maryland, by William S. Bryan, Jr., her Attorney General, and also the defendant, The State of West Virginia, by George E. Price, her Assistant Counsel, and respectively move the Court for leave to file the depositions of witnesses, and the exhibits therewith taken on behalf of the parties, both plaintiff and defendant, the maps and reports of the Surveyors and also certain documentary evidence.

WILLIAM S. BRYAN, JR.,
Attorney General of Maryland,
Attorney for the State of Maryland.
EDWARD H. SINCEY,
Assistant Counsel for the State of Maryland.
GEO. E. PRICE,
Assistant Counsel for the State of West Virginia.

(Endorsed:) Supreme Court of the United States. October Term, 1907. Term No. 1, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Motion for leave to file depositions, exhibits, maps, &c. Filed Oct. 15th, 1907.

962 And on the same day, to wit, on the 15th day of October, A. D. 1907, a stipulation as to printing record was filed in the words and figures following, viz:

963 Supreme Court of the United States.

No. 1, Original, October Term, 1907.

In Equity.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

It is agreed that in printing the Record in this cause, the Clerk shall not reduce and lithograph or print any of the Maps filed by either party or by the surveyors unless he shall be specifically directed to do so as to any particular map or maps; But the original maps or copies as filed may be used by the Court and counsel in the argument and decision of the cause as they may desire.

It is further agreed that in case counsel for either party shall not desire the whole of any book, pamphlet or document filed by such

party printed in the record, he may designate the portion thereof which he desires printed, and only the portion so designated shall be printed; otherwise the whole shall be printed.

EDWARD H. SINCELL,
Assistant Counsel for the State of Maryland, Plaintiff.
GEO. E. PRICE,
Assistant Counsel for Defendant, the State of West Virginia.

(Endorsed:) Supreme Court of the United States. October Term, 1907. Term No. 1, Original. The State of Maryland, Complainant, *vs.* The State of West Virginia. Stipulation of counsel as to maps and printing of record. Filed Oct. 15th, 1907.

964 And on the same day, to wit, the 15th day of October, A. D. 1907, the evidence for the Complainant was opened and filed, which said evidence is in the words and figures following, viz:

965 BROWN EXHIBIT No. 1.

The Charter of Maryland.

1632#.

Carolus Dei Gratia *Angliae Scotia Franciae* et *Hiberniae* Rex Fidei Defensor &c. Omnibus ad quos praesentes litterae nos trae pervenerint *Salutem* Cum perdilectus et perquam fidelis subditus noster Caecilius Calvert, Baro de *Baltimore* in Regno nostro *Hiberniae* Filius at Haeres Georgii Calvert Militis, nuper Baronis de *Baltimore* in eodem Regno *Hiberniae* Partis inherens vestigiis laudabili quodam et pio Christianam Religionem pariter et imperii nostri territoria dilatandi studio flagrans licentiam nobis ut copiosam Anglicanae Gentis Coloniam Industria ac Impensa sua ad certam quandam Regionem inferius describendam in Terra quadam in Partibus Americae hactenus inculta et Barbaris nullam divini numinis notitiam habentibus in Partibus occupata deducere possit totamq; illam Regionem cum certis quibusdam Privilegiis et jurisdictionibus ad Coloniae suae et Regionis praedictae salubre Regimen et Statum pertinentibus a regia nostra Celsitudine sibi et Haeredibus suis dari concedi et confirmari humiliter supplicaverit Sciatis igitur quod nos pium et nobile praefatorum Baronum de Baltimore Propositum et Studium Regio Favore prosequentes ex Gratia speciali certa Scientia et mero Motu nostris *dedimus concessimus et confirmarimus* et per hanc praesentem Chartam nostram pro nobis Haeredibus et Successoribus nostris praefato *Caecilio* modo Baroni de

#Sir George Calvert, visiting Virginia as one of the royal commissioners to whom the government of that colony was intrusted under the second charter of 1609, explored the upper portions of Chesapeake Bay, and on his return petitioned Charles I to grant him lands for the establishment of a colony here. He died before the charter granted him was executed, and it was issued to his son, Caecilius Calvert, Lord Baltimore.

It remained in force until the Revolution of 1776.

Baltimore Heredibus et Assignatis suis Damus, Concedimus et Confirmamus totam illam Partem Peninsulae sive Chersonesi jacentis in Partibus *Americae* inter Oceanum ex Oriente et sinum de *Chesopeake* ab Occidente a Residuo ejusdem per rectam Lineam a Promontorio sive Capite Terrae vocato *Watkin's Point* juxta Sinum praedictum prope Fluvium de *Wighco* scituato ab Occidente usque ad magnum Oceanum in Plaga Orientali ductam divisam Et inter Metam illam a Meridie usque ad Partem illam Estuarii de *Delaware* ab Aquilone quae subjacet quadragesimo Gradui Latitudinis Septentri-
966 onalis ab Aequinoctiali ubi terminatur *Nova Anglia* totumque illius Terrae Tractum infra Metas subscriptas (videlicet) Transeundo a dicto Æstuario vocato *Delaware-Bay* recta Linea per Gradum praedictum usque ad verum Meridianum primi Fontis Fluminis de *Pottowmack* deinde vergendo versus Meridiem ad ulteriorem dicti Fluminis Ripam et eam sequendo qua Plaga occidentalis ad Meridionalis spectat usque ad Locum quendam appellatum *Cinquack* prope ejusdem Fluminis Ostium scituatum ubi in praefatum Sinum de *Chessopeake* evolvitur ac inde per Lineam brevissimam usque ad praedictum Promontorium sive Locum vocatum *Watkin's Point.* Ita quod totus terre tractus per lineam praedictum inter magnum Oceanum et *Watkin's Point* divisus usque at promontorium vocatum *Cape Charles* et singula sua appendentia nobis heredibus et successoribus nostris integre remanentia exceptis imperpetuum nec non omnes Insulas et Insululas infra limites praedictos.

Concedimus eciam et confirmavivus eidem Baroni de Baltimore heredibus et assignatis suis omnes et singulas Insulas et Insululas ab orientali praedicte Regionis littore orientem versus, in mari natus vel nascendas infra decem lineas marinas ab eodem littore scitnatus (sic) cum omnibus et singulis portunus, navium stacionibus, estuariis, fluminibus, et fretis ad regionem vel Insulas praedictas pertinentes.

(*Vide* Charters and Constitutions of the United States, page 810.)

967 The Charter of Maryland.

1632.

A Translation.

Of a grant to him and his heirs, to Caecilius, Baron of Baltimore, the King &c., to all whom &c., Greeting:

Know ye, therefore, that we, regarding with Royal favor the pious and noble purpose and intention of the aforesaid Barons of Baltimore, of our special grace, certain knowledge and mere motion, have given, granted and confirmed, and by this our present charter for us, our heirs and successors, do give, grant and confirm to the aforesaid Caecilius, now Baron of Baltimore, and his heirs and assigns, all that part of the Peninsula or Chersonese lying in the parts of America between the Ocean on the East and the Bay of Chessopeake on the West, divided from the remnant of the same by a right line drawn from the Promontory or head of Land called Watkin's Point, beside

the Bay aforesaid, situate near the river Wighco, on the West, as far as the Great Ocean on the Eastern Coast, and between that boundary on the South as far as to that part of the Estuary of the Delaware on the North, which lieth under the fortieth degree of North Latitude from the Equator where New England is bounded; and all that tract of land within the boundaries underwritten, that is to say:

Going from the said Estuary, called Delaware Bay, in a right line in the degree aforesaid to the true meridian of the first fountain of the River Potomack, then tending downwards towards the South to the farther bank of the said River, and following it to where it faces the Western and Southern Coast as far as to a certain place called Cinquak, situate near the mouth of the same river, where it discharges itself into the aforenamed Bay of Chessopeake, and from thence by the shortest line, as far as the aforesaid Promontory or place called Watkin's Point.

So as all the tract of land divided by the line aforesaid between the Great Ocean and Watkin's Point, as far as to the Promontory
968 called Cape Charles, and singular their appendages, to us, our heirs and successors are entirely remaining forever excepted.

And also all islands and Isles within the limits aforesaid. We do also grant and do confirm to the same Baron of Baltimore, his heirs and assigns, all and singular Islands and Isles on the Eastern Shore of the aforesaid country towards the East, risen or to arise in the sea, situate within ten sea leagues from the same shore, with all and singular ports, roads of shipping, estuaries, flowings of water and arms of the sea to the Country or Islands aforesaid belonging.

Endorsed: An Extract from the Charter of Maryland, and a Translation thereof. Brown Exhibit No. 1. Supreme Court, U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907

969 BROWN EXHIBIT NO. 2.

CHAPTER 563.

An act to authorize and direct the Attorney-General of the State to take such steps as may be necessary to obtain a decision of the Supreme Court of the United States, which will settle the controversy between the State of Maryland and West Virginia concerning the true location of that portion of the boundary line, between the two states, lying between Garrett county, Maryland, and Preston county, West Virginia, and to appropriate a sum of money therefor.

SECTION 1. Be it enacted by the General Assembly of Maryland, That the Attorney-General of the State be and he is hereby authorized and directed to take as speedily as possible, such steps as may be necessary to obtain a decision of the Supreme Court of the United States which will settle the controversy between the States of Maryland and West Virginia over and concerning, and which will finally

fix and determine the true location of that portion of the boundary line between said States lying between Garrett county in the State of Maryland and Preston county in the State of West Virginia.

SEC. 2. And be it enacted, That the sum of five hundred dollars is hereby appropriated for the payment of the costs of said suit, and on the certificate of the Attorney-General, the Comptroller shall issue his warrant on the Treasurer for the same or any part thereof, and the Treasurer shall pay the same out of any funds not otherwise appropriated.

SEC. 3. And be it enacted, That this Act shall take effect from the date of its passage.

Approved April 8, 1890.

Endorsed: Chapter 563 of The Acts of the General Assembly of Maryland, passed at January Session, 1890. Brown Exhibit No. 2. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Filed Oct. 15, 1907.

970 EXHIBIT BROWN No. 3.

Constitution of Virginia, Adopted June 29th, 1776.

We, the Delegates and Representatives of the good people of Virginia, do declare the future form of government of Virginia to be as followeth:

The legislative, executive, and judiciary department, shall be separate and distinct, so that neither exercise the powers properly belonging to the other: nor shall any person exercise the powers of more than one of them, at the same time; except that the Justices of the County Courts shall be eligible to either House of Assembly.

The legislative shall be formed of two distinct branches, who, together, shall be a complete Legislature. They shall meet once, or oftener, every year, and shall be called, The General Assembly of Virginia. One of these shall be called, The House of Delegates, and consist of two Representatives, to be chosen for each county, and for the district of West-Augusta, annually, of such men as actually reside in, and are freeholders of the same, or duly qualified according to law, and also of one Delegate or Representative, to be chosen annually for the city of Williamsburgh, and one for the borough of Norfolk, and a Representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature; but when any city or borough shall so decrease, as that the number of persons, having right of suffrage therein, shall have been, for the space of seven years successively, less than half the number of voters in some one county in Virginia, such city or borough thenceforward shall cease to send a Delegate or Representative to *to* the Assembly.

971 The other shall be called the Senate, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed to business; for whose election, the different counties shall be divided into twenty-four districts; and each county of the

respective district, at the time of the election of its Delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the Sheriffs of each county, within five days at farthest, after the last county election in the district, shall meet at some convenient place, and from the poll, so taken in their respective counties, return, as a Senator, the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes and numbered by lot. At the end of one year after the general election, the six members, elected by the first division, shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

The right of suffrage in the election of members for both Houses shall remain as exercised at present; and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election, for the supplying intermediate vacancies.

All laws shall originate in the House of Delegates, to be approved of or rejected by the Senate, or to be amended, with consent of the House of Delegates; except money-bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

A Governor, or chief magistrate, shall be chosen annually by joint ballot of both Houses (to be taken in each House re-
972 spectively) deposited in the conference room; the boxes examined jointly by a committee of each House, and the numbers severally reported to them, that the appointments may be entered (which shall be the mode of taking the joint ballot of both Houses, in all cases) who shall not continue in that office longer than three years successively, nor be eligible, until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary shall be settled on him, during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government, according to the laws of this Commonwealth; and shall not, under any pretence, exercise any power or prerogative, by virtue of any law, statute or custom of England. But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

Either House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue the Assembly, during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time which they shall stand prorogued or adjourned.

A Privy Council, or Council of State, consisting of eight members, shall be chosen, by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose, out of their own members, a President, who, in case of death, inability, or absence of the Governor from the government, shall act as Lieutenant-Governor. Four members shall be sufficient to act,
and their advice and proceedings shall be entered on record,
973 and signed by the members present, (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them.

This Council may appoint their own Clerk, who shall have a salary settled by law, and take an oath of secrecy, in such matters as he shall be directed by the board to conceal. A sum of money, appropriated to that purpose, shall be divided annually among the members, in proportion to their attendance; and they shall be incapable, during their continuance in office, of sitting in either House of Assembly.

Two members shall be removed, by joint ballot of both Houses of Assembly at the end of every three years, and be ineligible for the next three years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

The Delegates for Virginia to the Continental Congress shall be chosen annually, or superseded in the mean time, by joint ballot of both Houses of Assembly.

The present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy-Council, on recommendations from the respective County Courts; but the Governor and Council shall have a power of suspending any officer, and ordering a Court Martial, on complaint of misbehaviour or inability, or to supply vacancies of officers, happening when in actual service.

The Governor may embody the militia, with the advice of the Privy Council; and when embodied, shall alone have the direction of the militia, under the laws of the country.

The two Houses of Assembly shall, by joint ballot, appoint
974 Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses.

These Officers shall have fixed and adequate salaries, and, together with all others, holding lucrative offices, and all ministers of the gospel, of every denomination, be incapable of being elected members of either House of Assembly or the Privy Council.

The Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a

necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective County Courts. The present acting Secretary in Virginia, and Clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed, as before directed; and the Clerks, by the respective Courts. The present and future Clerks shall hold their offices during good behaviour, to be judged of, and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective Courts, approved by the Governor, with the advice of the Privy Council, and commissioned by the Governor.

The Justices shall appoint Constables; and all fees of the aforesaid officers be regulated by law.

The Governor, when he is out of office, and others, offending against the State, either by mal-administration, corruption, or other means, by which the safety of the state may be endan-
975 gered, shall be impeachable by the House of Delegates.

Such impeachment to be prosecuted by the Attorney-General, or such other person or persons, as the House may appoint in the General Court, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under the government, or be removed from such office *pro tempore,* or subjected to such pains or penalties as the laws shall direct.

If all or any of the judges of the General Court should on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences above mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

Commissions and grants shall run, "*In the name of the Commonwealth of Virginia,*" and bear test by the Governor, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the Clerks of the several Courts.

Indictments shall conclude, "*Against the peace and dignity of the Commonwealth.*"

A Treasurer shall be appointed annually, by joint ballot of both Houses.

All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for.

The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the
976 free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon. The western and northern

extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains.

And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

Endorsed: Constitution of Virginia. Adopted June 29th, 1776. Exhibit Brown No. 3. Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

977 EXHIBIT BROWN NO. 4.

CHAPTER 3.

An Act to Ascertain and Fix the Boundary Lines of the States of Virginia and Maryland.

Passed March 26th, 1858.

Whereas, The General Assembly of Maryland has passed two Acts for running and marking the boundary line between that State and the State of Virginia, beginning therefor at Smith's Point at the mouth of the Potomac river, and running thence to the Atlantic Ocean, to form the eastern line, and beginning at the Fairfax stone on the Potomac river, sometimes called the North Branch of the Potomac river, at or near its source, and running thence due north to the line of the State of Pennsylvania, for forming the western boundary line; and whereas, the Legislature of the State of Maryland has requested the appointment of a Commissioner on the part of this State, to act in concert with the Commissioners of Maryland, to run, ascertain and mark the said lines, therefore,

1. Be it enacted by the General Assembly of Virginia, That the Governor, be and he is hereby authorized and required to appoint as soon as may be a Commissioner, who together with the Commissioner who may be appointed on the part of Maryland, shall cause the said lines to be accurately surveyed, traced and marked with suitable monuments, from Smith's Point at the mouth of the Potomac river to the Atlantic Ocean, and from Fairfax stone, situated as aforesaid to the Pennsylvania line as aforesaid.

2. It shall be the duty of the Commissioner on the part of the State of Virginia, after the running, locating, establishing and marking the said lines, to make a joint report with the Commissioner, on the part of Maryland, setting forth all the facts touching the same, and to forward a copy of said joint report to the Legislature of
978 Virginia; and upon the ratification of such report by the Legislatures of the States of Maryland and Virginia, the said lines, thus run and ascertained, shall be fixed and established; to

remain forever, unless changed by the mutual consent of the said States of Maryland and Virginia.

3. Be it further enacted, That an adequate compensation be allowed by law, upon an order of the Executive, to said Commissioner, to be paid out of any funds in the treasury not otherwise appropriated.

4. This Act shall be in force from its passage.

Endorsed: Act of the General Assembly of Virginia, passed March 26, 1858. Exhibit Brown No. 4. Supreme Court, U. S. No. 1 Original, Oct. Term, 1907. Maryland *vs.* West Virginia. Filed Oct. 15, 1907.

979 BROWN EXHIBIT No. 5.

CHAPTER 275.

An Act for Running and Marking the Western Boundary Line of this State.

Whereas, it is of great importance, that the Western territorial limits of the State of Maryland be clearly defined, and her boundaries permanently established, and whereas, the true location of the Western line of Maryland, between the States of Maryland and Virginia, beginning at or near the Fairfax stone, on the north branch of the Potomac river, at or near its source, and running in a due north line to the State line of Pennsylvania, is now lost and unknown, and all the marks have been destroyed by time or otherwise; and whereas, the States of Virginia and Maryland have both granted patents to the same tracts of land, at or near the supposed line, and as suits of ejectment are now pending in the Circuit Court for Allegany County, in the State of Maryland, by persons holding under Maryland patents against persons now in possession and holding land under patents granted by the State of Virginia, which cannot be justly settled without establishing said boundary line; Therefore,

SECTION 1. Be it enacted by the General Assembly of Maryland That the Governor be, and he is requested to open a correspondence with the Governor of Virginia, in relation to tracing, establishing and marking the said line, and in case the Legislature of Virginia shall pass an Act providing for the appointment of a Commissioner to act in conjunction with a commissioner on the part of Maryland, in the premises, then, and in such case, the Governor, be, and he is hereby authorized and required to appoint a commissioner, who, together with the commissioner who shall be appointed on the part of Virginia, shall cause the said line to be accurately sur-
980 veyed, traced and marked with suitable monuments, beginning therefor at the said Fairfax's stone, and running thence due north, to the line of the State of Pennsylvania.

SEC. 2. And be it enacted, That it shall be the joint duty of the commissioners, after running, locating, establishing and marking the said line, to make a report, setting forth all the facts touching

the locating and marking said line; and it shall be the duty of the commissioners of each respective State, to forward copies of the joint report to each of their respective Legislatures: and upon the ratification of such report by the State of Virginia and the State of Maryland, through their respective Legislatures, the said boundary lines shall be fixed and established so to remain forever, unless changed by mutual consent of the said States.

Approved May 27th, 1852.

Endorsed: Chapter 275 of the Acts of the General Assembly of Maryland. Passed and approved. May 27th, 1852. Brown Exhibit No. 5. Supreme Court, U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

981 EXHIBIT BROWN No. 6.

Resolutions Adopted by the First Constitutional Convention of Maryland, on the 30th Day of October, 1776.

Resolved unanimously, that it is the opinion of this convention, that the State of Virginia hath not any right or title to any of the territory, bays, rivers, or waters included in the charter granted by his Majesty Charles the first, to Caecelius Calvert, Baron of Baltimore.

Resolved unanimously, that it is the opinion of this convention, that the sole and exclusive jurisdiction, over the territory, bays, rivers, and waters, included in the said charter, belongs to this state, and that the river Potomac, and almost the whole of the river Pocomoke, being comprehended in the said charter, the sole and exclusive jurisdiction over the said river Potomac, and also over such part of the river Pocomoke, as is comprehended in the said charter, belongs to this state, and that the river Potomac, and that part of the Chesapeake bay, which lies between the Capes and the south boundary of this State, and so much thereof as is necessary to the navigation of the rivers Potomac and Pocomoke, ought to be considered as a common highway free for the people of both States, without being subject to any duty, burthen or charge, as hath been heretofore accustomed.

Resolved unanimously, that it is the opinion of this convention, that the very extensive claim of the State of Virginia to the back lands, hath no foundation in justice, and that if the same or any like claim is admitted, the freedom of the smaller States, and the liberties of America, may be thereby greatly endangered.

Endorsed: Resolutions Adopted by the First Constitutional Convention of Maryland, on 30th October, 1776. Exhibit Brown No. 6. Supreme Court, U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

982 EXHIBIT BROWN NO. 7.

EXHIBIT A.

From Frederick, Lord Baltimore's, Instructions to Gov. Horatio Sharpe, 1753.

"Whereas the Right Honorable Lord Viscount Fairfax has a grant of a large tract of land lying and running along the banks of Patowmack River on the Virginia side, and whereas I am informed, the powers of government in Virginia have taken the liberty to ascertain the bounds and limits of his said Lordship's grant running along the banks of the said river, which river, to the further bank thereof, is limited to me with its soil and water, and is a boundary between my Province of Maryland and the Province of Virginia into the fountain head of the said river; and whereas I am informed that commissioners have proceeded therein, and instead of their stopping at South Branch, which runs from the first fountain of Patowmack River, one of the boundaries of Maryland, have crossed to a branch running north, whereby their endeavours are to give limits and boundary marks prescribed by my royal charter, subjecting me to great loss of country; and whereas it being not known to me that my predecessor was made a party to the settlement of such boundaries by the said commissioners; and were it so, such settlement would be invalid by virtue of my father's marriage-articles, he being only tenant for life, with reservation to me as tenant in tail; I therefore desire and require of you, as soon as possibly you can, to get intelligence how much boundaries have been or are settled by the said commissioners with regard to Lord Fairfax and his grant; and at the same time, if opportunity serves you, you may communicate to Lord Fairfax that I am very desirous of settling proper limits conclusive between him and me in regard to my Province of Maryland and his grant in Virginia; and in the mean time you must make or have made a good look out, and warning given to such persons as shall venture to settle in such disputed boundary between my Province of Maryland and the Province of Virginia under the said grant to Lord Fairfax."

983 EXHIBIT B.

Sharpe to Fairfax.

(SEPT. 1753.)

"* * * Lord Baltimore was pleased to charge me with an inquiry into the true meridian and place of the fountain head of Patowmack. The best information I have hitherto been able to procure gives me reason to believe there has been a mistake in fixing the spring head to the North Branch, since the length, with other circumstances, more properly denotes the Southern Branch, commonly called Wappacomo, to be the main and principal course of that river.

I am the more willing to be persuaded of the truth of this representation for the considerable advantage that will accrue to your Lordship. That branch, I am informed, has never been thoroughly explored and traced to its source; but I flatter myself with having your Lordship's concurrence for such an examination into its course, length, width and depth as may bring this matter to a nearer degree of certainty; and if that should appear to be the fountain head of Patowmack River, I shall not question but your Lordship will be for taking such measures as may ascertain the mutual limits of the two Proprietorships, agreeable to the direction and true intention of their respective charters.

EXHIBIT C.

Fairfax to Sharpe.

"FREDERICK, *September the 24th*, 1753.

"SIR: Yours I received by Mr. Young, by which I perceive Lord Baltimore designs to dispute with this Province which is the head spring of Patowmack, the south or north branch as run out by the commissioners between his Majesty and me in the year 1746.

"I am entirely (of the opinion?) that the South would be much to my advantage, and therefore think it improper for me to
984 appear therein, and that the Governor of Virginia and your excellency should transact that affair. If his Lordship should obtain his demand, I must insist upon a new line between his Majesty and me to the Southward."

EXHIBIT D.

Extract from the Royal Proclamation of October 7th, 1763.

"And whereas it is just and reasonable, and essential to Our interest and the security of Our colonies that the several nations or tribes of Indians with whom We are connected, and who live under Our protection, should not be molested or disturbed in the possession of such parts of Our dominion and territories as, not having been ceded to, or purchased by, Us, are reserved to them or any of them, as their hunting grounds, We do therefore, with the advice of Our Privy Council, declare it to be Our Royal will and pleasure that no Governor or Commander-in-Chief in any of Our Colonies of Quebec, East Florida, or West Florida, do presume upon any pretense whatever, to grant warrants of survey or pass any patents for land beyond the bounds of their respective governments as described in their commissions; as also that no Governor or Commander-in-Chief in any of Our other Colonies or Plantations in America do presume for the present, and until Our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic ocean from the west and north-west."

985 EXHIBIT E.

McMahon's Statement and Argument.

Thus were finally adjusted what are now the eastern and northern boundaries of Maryland, which separate it from the States of Delaware and Pennsylvania respectively. Yet even this controversy had not terminated before the proprietary of Maryland found himself involved in another, menacing the loss of another fertile portion of his province. Like the bayed lion, he had only shaken one adversary from his mane, to turn him to another who was biting at his heel. A whole century had been spent in fruitless contests for his northern and eastern territory, and he was now to begin another contest for his southern and western boundary, which has not terminated even at this day, and is likely to be of equal duration with the former. This related to, and grew out of the description of "the first fountain of the Potowmack," as the common terminus of the western and southern boundaries of Maryland: and was predicated upon a grant of the northern neck of Virginia, to the origin of which it will be necessary briefly to refer.

It was first granted by Charles II. in the first year of his reign, or rather, the first year after Charles I. was beheaded, for Charles II. was then a monarch without a crown, a king without subjects, and a grantor without territory. He was then emphatically Charles "Lackland," and in an admirable condition for making grants to secure adhesion of the followers of his fallen fortunes. The grantees in this grant were Lord Hopton, Lord Jermyn, Lord Culpepper, Sir John Berkeley, Sir William Morton, Sir Dudley Wyatt, and Sir Thomas Culpepper, and the territory granted, was, "all that tract of land, lying and being in America, and bounded within the heads of the rivers, Rapahannock and Quiriough or Potowmac, (the courses of the said rivers as they are commonly called and known by the inhabitants) and the "Chesapeake bay." After the restoration of Charles, the validity of the grant was drawn in question, and the title to it having passed, by the death of some of the proprietors,

and by purchase from others of them, to the earl of St.
986 Albans, Lord Berkeley, Sir William Morton and John H. Tretheway, Esquire, the original grant was surrendered by them for the purposeof receiving a new grant for the same territory, for which they accordingly obtained letters patent from king Charles, in May, 1669. Although Virginia was, at the period of these grants, a royal government, (as the colonial governments, which were directly administered by the crown, were styled:) and being such, the power of the crown to grant, at its pleasure, the vacant lands within its jurisdiction, was unquestionable, they yet occasioned great discontents amongst the Colonists of Virginia. The grant of Maryland, as we have already seen, was long resisted as a dismemberment of the colony; and being followed by these grants, they began to apprehend their reduction to a secondary rank amongst the colonies. Yet the grants of the northern neck carried

with them nothing but the rights of soil, and the incidents of ownership, for they were expressly subjected to the jurisdiction of the government of Virginia. The discontents fermented by this and other acts of the crown, rose to so high a pitch, that agents were sent to England, in April, 1675, by the Assembly of Virginia, who were instructed amongst other things to remonstrate against the grant, and to request that the Assembly might be authorized, by act of incorporation, to purchase it from the proprietors. Their requests were favourably received, but the gratification of them was prevented by causes, to detail which would be foreign to our present purposes. It will suffice to say, that the title to the whole having vested in Thomas Lord Culpepper, a new patent for it was granted to him by King James II. in the fourth year of his reign, and that from him it descended to his daughter and only child, who was married to Lord Fairfax, and thus passed into the Fairfax family. (65.)

These grants of the Northern Neck, as it will be perceived,
987 call for *for* the lands lying on the south side of the Potomac to its head, and in this call there was nothing inconsistent or clashing with the call of the charter in Maryland. The call of the latter is to the first fountain or source of the Potomac, which was of course its head, and therefore a conflict between these two grants could only arise from the extrinsic difficulty or doubt, as to the true location of the first fountain or head. As then, the patents for the northern neck did not appear upon their face to be infractions of the proprietary's chartered rights, and could only become so by dispute about the true location of the common call, they were not calculated to excite his jealousies, or to beget difficulties between him and the claimants under the former, until the settlements began to extend towards the head of the Potomac. Hence, it does not appear that his attention was directed to the ascertainment of the first fountain, or that he was involved in any controversies about it, until the middle of the eighteenth century. Early in that century, Lord Fairfax had visited Virginia for the purpose of surveying the grant of the Neck: and it appears from the recitals of an act of the Virginia Assembly, in the year 1736, that at that period, he and his predecessors, through their agents and attornies, had already granted a considerable portion of it. (66.)

In 1748, a Land Office for the grant of the lands in the neck, was formally opened by Fairfax, and kept open until his death, in 1781, which was conducted in his name, and at his expense, as the proprietor of the northern neck. (67.)

A wide field being thus opened to the spirit of enterprise and speculation, the grants were soon extended so far to the west as to raise the question as to the location of the head of the Potomac,

(65) For the history of these grants, of which a summary is given above, see Chalmer's, 330, and notes. Keith's History of Virginia, 166. Recital of the 13th Chapter of Acts of Assembly of Virginia for the year 1736, and the case of Fairfax's Lessee against Hunter's Devisee, 7th Cranch's Reports, 603.

(66) Keith's History of Virginia, 166. Virginia Revised Code of 1812, 1st Vol. 8 to 14.

(67) See the special verdict in case of Fairfax's Devisee, 7 Cranch, 607.

and at the same moment that Frederick Lord Baltimore, the then proprietary, was endeavouring to ascertain the exact effect which the agreement of 1732, relative to his northern boundaries, would produce upon his grant, we find him directing his attention also to its western limits. In his instructions to Governor Sharpe, which were presented by the latter to his council in August, 1753,
988 he alludes to the Fairfax grant, and remarks that he had been informed that the government of Virginia had undertaken to ascertain the limits of his charter: and that the commissioners who had been appointed for this purpose, instead of stopping at the South Branch, which runs from the first fountain of the Potomac, had gone even to the North Branch--that if any such adjustment was made, he had no knowledge of his predecessor being a party to it; and therefore concluded by it, that if it were made with the privity of the latter, it would be invalid, as the former proprietary held the province only as a tenant for life under a strict settlement. He therefore directs the governor to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise Lord Fairfax of his desire to adjust that boundary with him; and he at the same time commands him to "keep a good look out, and prohibit settlements under Fairfax in the country north of the South Branch." (68.) These instructions being laid before the council, in order to a compliance with them, they endeavoured to collect information with reference to the relative extent of the north and south branches of the Potomac, and for this purpose they summoned before them Col. Thomas Cresap, one of the settlers in the western extremity of the State, who was supposed to be familiar with the course and extent of these branches.

He accordingly attended at their next session in September, 1753, and informed them, that in his opinion the south branch of the Potomac was the longest stream, because it continued, as he thought, the longest stream even from its mouth, and ran about sixty miles further in a north eastern direction than did the north branch. (69.) Thus informed, the governor addressed a letter to Lord Fairfax, in which, after apprising him of the instructions received from the proprietary, he remarks that the information, which he had obtained, induces him to believe that there has been some mis-
989 take in fixing the fountain head of the Potomac at the source of the north branch, inasmuch as the relative length of the two branches, and other circumstances, concur to show that the south branch, commonly called "Wappacomo," is the main and principal course of that river. He therefore expresses the hope, that his lordship will concur with him in causing such an examination of these branches to be made, as will put the question to rest. (70.)

The adjustment of the boundaries of Fairfax's grant, which it alluded to in these instructions of the proprietary, was one of the nature of which he appeared to have been wholly unapprised. His instructions are predicated upon the supposition, that the surveys

(68) Council Proceedings of Maryland, Liber T. R. and W. S. page 12.
(69) Council Proceedings, Liber T. R. and W. S. 13.
(70) Jefferson's Notes on Virginia, 193 and 194.

might possibly have been made with the knowledge and concurrence of his predecessor: and hence he denies the power of the latter to enter into any arrangements as to the boundaries which could extend beyond his life estate, or conclude those in the remainder. This caution was wholly unnecessary; for it does not appear, from a full examination of all the proceedings of the proprietary government, on record in the province, that the proprietaries of Maryland were ever, in any wise privy to any settlement of the boundaries which contemplated the extension of Fairfax's grant to the north branch: nor are we aware that it has ever been alleged. The only adjustment, which ever took place, was one, growing out of controversies between Fairfax and the government of Virginia, having reference, solely, to the conflicting territorial claims, and concluded by proceedings, to which Baltimore was in no wise a party, and of the existence of which, he and his government appear to have had no knowledge, before they were terminated. Mr. Jefferson has given us a reference to the several documents connected with it; but in such a manner, as to indicate, rather, that he merely knew that they were in existence, than that they had come under his personal observation. (71.) Enough, however, is known, to enable us to state the general result, which alone is important in con-
990 nexion with our present enquiry. It appears that in 1733, a petition was preferred by Fairfax to the King in Council, praying, that a commission might issue for running and marking the dividing line, between his grant and the province of Virginia, and that the commission was acordingly issued, and the survey made and reported in August, 1737. In December, 1738, these reports were referred to the consideration of the council for plantation affairs, by whom a report was made in 1745, which determined the head springs of the Rappahannock and Potomac, and directed that a commission should issue to extend the line. This report was confirmed by the King in Council; and the line being adjusted in conformity to it, an act was passed by the General Assembly of Virginia, in the year 1748, which adopts the order in Council, and confirms all previous grants made by the crown, of lands lying within the limits of the Fairfax grant. (72.) The line thus settled, adopted the north branch of the Potomac, as the first head of that river, by which location of it, thus pushing over the Fairfax grant to this branch, without even considering, much less respecting, the claims of the proprietary of Maryland, each of these interested parties were to be benefitted at his expense.

On the one hand, the territory subject to the jurisdiction of Virginia was enlarged; and on the other, Fairfax gained a more valuable territory lying between the north and south branch, than that which he lost lying east of the head of the south branch, and between it and a meridian passing over the head of the north branch. During all this period, the situation of the proprietary of Maryland afforded to these parties the most favourable opportunity for practising this usurpation of his rights. His petition for the confirmation

(71) Jefferson's Notes on Virginia, 193 and 194.
(72) Jefferson's Notes, 103. Virginia, Revised Code of 1812, page 14.

of his grant, so as to exclude the claims of the Penns, was then pending before the King in Council, to await the issue of the proceedings in Chancery upon the agreement of 1732, which was all the while progressing. The momentous character of that proceeding was well calculated to engross his attention, and to divert it entirely from these *ex-parte* transactions, on the part of Fair-
991 fax, which did not upon their face even profess to interfere with his grant; and to the purpose of which, he was awakened only by the knowledge of the actual location from the north branch. His death, shortly afterwards, prevented the proprietary from adopting any decisive measures for the vindication of his rights; but the instructions of his successor in 1753, immediately after his accession to the proprietaryship, exclude all inference of acquiescence in these unwarrantable acts; and manifest a full determination on his part, to exclude all settlements which might be attempted under them upon his territory.

The letter of the governor of Maryland to Fairfax shows us, that this determination of the proprietary was promptly met, and seconded by his officers: but we are left utterly in the dark as to the further progress of the negotiation thus opened. From this period, until the revolution, the existing records of our Council and Assembly transactions are entirely silent as to this contest, of which an accurate history can be collected, only from the records of the English Council. We know only that Fairfax continued to adhere to the line, as adjusted between him and the crown, and to issue grants for the disputed territory; and that the proprietary of Maryland continued to assert his claims to the first fountain, be that where it might, and waited but a favourable opportunity for bringing the subject before the King in Council. For some years after the controversy was opened, the attention of the government of the province was wholly engrossed with its internal concerns, and its efforts, in common with the other colonies, in the prosecution of the French and Indian wars: but these being terminated by the definitive treaty of peace, concluded at Paris in February, 1763, it is probable, that by the restoration of peace upon the borders, the settlements of Maryland would soon have been pushed to its extreme limits. Had this occurred, there would soon have ensued a collision between the grants of the proprietary and of Fairfax; and this collision would at once, either have brought about an amicable adjustment of the boundaries, or have forced it for determination before the King in Council. At this moment, when the conflict seemed inevitable, two causes for its suspension arose, which held this difference
992 in abeyance, until the revolution came to convert it into a contest between free and independent states. By the treaty of Paris, in 1763, above alluded to, a large territory was ceded to the English, within which newly acquired territory, it became necessary to organize colonial governments. For this and other purposes, a proclamation was issued by the king, in October, 1763, by which, and to enable the English government to carry into effect its engagements to the Indians, the colonial governments generally, were prohibited from granting any lands lying west of the sources or heads

of any of the rivers, flowing into the Atlantic from the west and north-west. (73.) In the ensuing April, instructions were issued by governor Sharpe, to the Judges of the Land Office, which set forth, that the proprietary was desirous to have reserved for him, ten thousand acres of land in the western part of Frederick county, to be held as a manor; and that he had therefor- instructed the surveyor of that county not to execute any warrant on any lands lying beyond Fort Cumberland, until that reserve was taken off. This general interdict of the crown, and the reserve to the proprietary, each tended to check the progress of the settlements, in the direction of the debatable territory; and the proprietary and his officers now waited for the first favourable opportunity of bringing the question before the Council, which might present itself. In 1771, a survey of the two branches was made by Colonel Cresap, under the direction of the proprietary. Our records do not distinctly inform us, for what purpose it was made. The survey itself, has been preserved in our Land Office, and presents a very accurate view of the courses of the two branches, through the heads of which, meridians are drawn, for the purpose of determining their relative extent to the west. From the year 1753 up to this period, it appears to have been continually held on the part of Maryland, that the south branch was the
993 most western source, and therefore, *the first fountain:* but the survey of 1771 appears to have been the first *actual* examination and survey of the two branches, which was made with this view. The papers, connected with the settlement of the expenses of the survey, shew, that it was made under the directions of the proprietary government; and it seems probable that it was made, both for the purpose of informing the proprietary as to the true location of the branches, and of furnishing a basis for any application which might be made by him to the King in Council. In March, 1774, the subject of the reserve, on the lands lying westward of Fort Cumberland, being brought before the proprietary's Board, of Revenue, which had been organized in 1766, '67, that Board determined, that the object of the reserve had been accomplished, in the surveys actually made for the proprietary; and, therefore, took off the reserve. This determination led to a correspondence between them and Mr. Jenifer, the proprietary's agent, which exhibits the course of the proprietary before that period, and illustrates his motives for forbearance. Mr. Jenifer disapproved of the course pursued by the Board, in throwing the western lands open for grant; and in the hope of dissuading them from it, he addressed them a letter in May, 1774, in which he states, that he had heard, that grants had been issued since their decision, under which, persons were not only making surveys to the west of Fort Cumberland, but even across the Alleghany mountains, and west of the meridian of the north branch. Such surveys he considered as not only in contravention of the King's proclamation of 1763, but also at war with the policy of the proprietary. The proprietary, he says, has

(73) This proclamation was not intended to alter the boundaries of the Colonies, but was a mere temporary arrangement, suspending for a time the settlement of the count-y reserved. See Supreme Court of United States, in Fletcher *vs.* Peck, &c., — Cranch, 142.

hitherto cautiously avoided giving offense by granting lands westward of the line, settled between the crown and Lord Fairfax; and although there is not a doubt, that the south branch is the fountain head, and the point at which the meridian for the western boundary ought to start, yet the proprietary is waiting for a favourable opportunity of bringing it before the King in Council. In conclusion, he expresses the hope, that some recent territorial differences between Virginia and Pennsylvania, under which, each government had arrested those acting under the authority of the other, would bring about this much wished for occasion. The reply of the
994 Board through Mr. Steuart, relies upon the confession of the Agent, as to what are the proper limits, and declares, that it does not become either them or their agent, to do any act which may have a tendency to restrict those limits. "The proprietary, (say they) has lately been at the expense of running a line to the south branch, and if the Virginians hear that he doubts about the extension of his limits, it will be an encouragement to them to begin to throw stones." Mr. Jenifer still continued to press upon them the propriety of delaying this step, and urged, that as the proprietary had not, before the decision of the Board, made any grant of lands, lying west of the north branch, a delay of the measure could not weaken the proprietary claim, or encourage the pretensions of the Virginians. The Board still adhered to their determination, and large grants of land on the reserve were immediately made, and continued to be made, until October 1774, when instructions were received from the proprietary, directing the Judges of the Land Office to suspend all further grants of the reserved lands, and to prepare and transmit to his guardians an accurate list of all warrants issued under the order of the preceding March, and of all settlements and locations made within the territory thrown open by that order, since the year 1763. (74.)

So stood the controversy between the proprietaries, when the American revolution came to elevate the provinces of Maryland and Virginia, to the rank of free and independent states. Fairfax was still the proprietor of the Northern Neck, and in the full exercise of all the powers incident to his absolute ownership of the soil, subject to the jurisdiction of the royal government of Virginia; and the effect of the revolution upon his grant was to substitute the jurisdiction of the state government, whilst it left him in the full enjoyment of the grant. By this change, the question between the two states, was, as to Virginia, merely one of jurisdiction over the
995 debateable territory, and so remained until the death of Fairfax in 1781. It would be useless, in our present inquiry, to pass in review the legislation of Virginit as to the Northern Neck, subsequently to the death of Fairfax; it will suffice to say, that it was by him devised to Denny Fairfax; and that, in consequence of his

(74) The proceedings of the Board of Revenue are preserved, and may now be found in the Land Office. The titles acquired under warrants, issued between the 22d of March and the 6th of October, 1774, to affect lands lying westward of Fort Cumberland, were saved by the Act of 1784, Chap. 75.

alienage and absence from the province, several acts were passed by the Assembly of Virginia, by the last of which, the Act of 1785, Chap. 63, the state of Virginia claimed the ownership, and made provision for the grant, of vacant lands in the Northern Neck. All of these acts were subsequently declared by the Supreme Court of the United States to be insufficient to divest the title of Fairfax's devisee; and the defect in his title, because of alienage, was held to be cured by the Treaty of 1794. (75.)

These acts, which left the title in the devisee, from whom it passed to his grantees, are here adverted to only for the purpose of shewing that as early as 1785, the State of Virginia, having assumed to herself the ownership of the vacant lands in the Northern Neck, stood clothed with claims similar to those of the State of Maryland. Returning to the consideration of this contest for territory, which, by the force of the revolution, had become a subject for adjustment between these sovereign, independent, yet sister states of the confederacy, we are now to unfold the causes which have delayed that adjustment even until this day. That it should now be where the revolution found it, may excite our surprise. The history of the transaction, if it removes the wonder, will also tell us where the censure lies. It has been seen, that, up to the era of the revolution, the claim of the proprietary of Maryland to the first fountain of the Potomac *be that where it might,* had never been for a moment relaxed, and that, whatever, the adversary possession of the disputed territory, it was held in the face of a continual claim and assertion of right on his part, and against his unceasing efforts to re-
996 claim it. The revolution having cast upon the State of Virginia the adjustment of the boundary, under circumstances such as these, left her no equitable objections to urge against the claim of Maryland to the full extent of her territory, as defined by her charter. Hence, in the constitution of Virginia, adopted in June, 1776, we find a full and express recognition of the right of Maryland "to all the territory contained within its charter, with all the rights of property, jurisdiction and government, and all other rights whatsoever to the same, which might at any time theretofore have been claimed by Virginia, excepting only the free navigation and use of the rivers Potomac and Pocomoke, with the property of the Virginia shores or strands, bordering on either of said rivers, and all improvements which have been or shall be made thereon." (76.)

The object and necessity of this exception will at once be apparent, when we reflect upon the new relation in which the two provinces now stood to each other, as sovereign states; and the promptitude with which the desire of Virginia to keep open to her citizens the enjoyment of these rights of navigation and their incidents, was met and reciprocated by the State of Maryland, places her conduct

(75) Fairfax's devisee against Hunter's lessee, at February term, 1813, reported in 7th Cranch. 607.

(76) Virginia Constitution of 1776, article 21st.

in a very favourable point of view. (77.) In the very next year after this constitutional reservation, by a resolution of the Assembly of Maryland, Daniel of St. Thomas Jenifer, Thomas Stone and Samuel Chase, were appointed commissioners on the part of Maryland for the purpose of adjusting with the commissioners on
997 the part of Virginia (George Mason and Alexander Henderson) "the navigation of, and jurisdiction over, that part of the Chesapeake Bay which lies within the limits of Virginia, and over the rivers Potomac and Pocomoke," subject to the ratification of the general Assembly. (78.) The result of the conferences of these commissioners was a compact, formed at Mount Vernon, on the 28th March, 1785, which accomplished all the purposes of their appointment, and which received the ratification of the legislatures of both states at their next session. (79.)

This compact contains a series of commercial regulations, constituting a treaty of commerce predicated upon the basis of free and equal rights in the navigation of these rivers, to be maintained for their common benefit, by their common efforts, and at their joint expense, and securing these in a manner eminently calculated to promote and establish a*m* harmonious and beneficial intercourse. These regulations have been superseded by the adoption of the Constitution of the United States, which devolved upon Congress the power of regulating commerce with foreign nations, and among the several States; but they are worthy of all commendation, and deserve to be the most cherished part of our history, when we remember, that to these may be traced the germ of the causes which called that constitution into being, which freed us from that *"rope of sand"* the confederation, and which placed us under the shadow of that blessed Union, *by whose guidance we have been conducted to happiness as a people, and to peace, power and prosperity as a nation.* Besides these commercial regulations, it contains provisions for the apprehension and punishment of offenders, for the arrest of absconding debtors, and for the security and protection of the river and bay possessions of the citizens of the two states, which require a passing notice.

It provides as to *all offences committed on the part of the Chesapeake bay which lies within the limits of Virginia, or that part of it*

(77) It is, however, proper to state, that this reservation of Virginia was not well received at first. In October, 1776, the subject of it was brought under the consideration of the convention which formed our present State Constitution, by which several resolves were adopted, asserting in the broadest terms the right of Maryland to all the territory included in the charter, to the sole and exclusive jurisdiction over all the waters bays &c., within that territory, and especially to the Potomac and such part of the Pocomoke as falls entirely within its territory; and declaring that the river Potomac, and that part of the Chesapeake Bay lying between the capes and the northern boundary of the State, or so much thereof as is necessary to the navigation of the Potomac and Pocomoke, ought to be considered a common highway, free for the people of both States, without being subject to any duty or charge.

See Hanson's Edition of the Laws, which includes the journal of this Convention.

(78) Resolution 6th of October Session, 1777.

(79) Virginia Acts of December session, 1785, chap. 18, and Maryland Acts of 1785, chap. 1.

where the line of division from the south point of Potomac river called Smith's point, to Watkin's point near the mouth of Pocomoke river, may be doubtful, or committed on the Pocomoke within the limits of Virginia, or where the line may be doubtful, that the jurisdiction over the same, if committed by persons, not citizens
998 of Virginia, against the citizens of Maryland, shall belong to the courts of Maryland, having legal cognizance of such offences, and so vice versa; and that if committed by a citizen of Maryland against a citizen of Virginia, or vice versa, the jurisdiction over the offence shall belong to the courts of the State of which the offender is a citizen. It establishes the same regulations as to offences committed on the Potomac river, except in cases of offence or crime by a person not a citizen of either State, against a person not a citizen of either, as to which the jurisdiction shall attach in the State to which the offender is first brought. It provides as to all persons absconding or flying from justice in any civil or criminal case, or attempting to defraud creditors by the removal of property, that such person or property so flying or removed, may be seized upon any part of said bay or said rivers, by process of the State whence the party fled, or the property was removed. It permits the process of either State to be served anywhere, on said rivers, on the person or property of any one not being a citizen of the other State, so that the process of both States may run over the whole extent of these rivers, as against all persons not citizens of either State. And lastly, as to the riparious possessions of the citizens of the two States, it declares: 1st. That the citizens of each State shall have full property in the shores of the Potomac, adjoining their lands, with all advantages and emoluments thereto belonging, and the privilege of making and carrying out wharves and other improvements, provided they do not obstruct or injure the navigation of the river. 2dly. That the rights of fishing in said river shall be open to the equal enjoyment of the citizens of both States, provided, that it be not exercised by the citizens of one State, to the hindrance or disturbance of the fisheries on the shores of the other, and also that the citizens of neither State shall have the right to fish with nets or seines on the shores of the other. 3dly. That for any violence, injury or trespass, to, or upon the property or lands of any citizen of either State, adjacent to the bay or the said rivers, or to any person upon such lands, committed by any citizen of the other State, upon proof of due notice to the offender, to appear and answer in any court of record, or before any magistrate having cognizance
999 of such inquiries &c., may enter the appearance of such offender, and proceed to trial, as if the offender were served with legal process, and the judgment so rendered shall be valid against the person and property of the offender in both States, and execution may be issued as in other cases, or upon a transcript of the judgment properly authenticated, produced to any court or magistrate of the State where the offender resides, having jurisdiction in the State or county where he resides, in similar cases, such court or magistrate may issue execution thereon as upon its or his own judgment.

Thus by this compact, irrevocable, except by the assent of both States, all differences were ended which could arise about the rights reserved by Virginia, under her constitution; and Maryland was now, by the concessions of that very constitution itself, as well as by the intrinsic efficacy of her charter, confessedly entitled to all the territory which fell within her chartered limits, subject to the compact. Had she known and pursued her interests, this compact would never have been formed without making the adjustment of the western boundary a part of it; and had the consideration of it been introduced into the negotiation, and its settlement insisted upon by Maryland, it would doubtless have been conceded. Virginia was too much alive to the deep interests which she had staked upon that negotiation, and which might be lost be its failure, to have hazarded all for an interest comparatively so unimportant, as her claim to mere jurisdiction over a portion of what was then her remote territory. That it should have been passed by, whilst a subject so intimately connected with it was under consideration, and that it should not have been brought up, even as a subject matter for negotiation, until 1795, is truly surprising. (80.)

In that year, by a resolution of the General Assembly of this State, Messrs. Pinkney, Cooke and Key, were appointed commis-
1000 sioners on the part of this State, to meet such commissioners as might be appointed on the part of Virginia, with power to adjust, by compact between the two States, the western and southern limits of this State, and the dividing lines and boundaries between it and Virginia; and also any claim of either State to territory within the limits of the other; and in the event of agreement, the compact was to be reported to the Legislature for its confirmation. Delay still followed delay, Mr. Pinkney having left the province, and Mr. Cooke having declined acceptance; in 1796, Charles Carroll of Carrollton, and J. T. Chase, Esqrs., were appointed in their stead. (81.) Mr. Key removed from the State, and Messrs.

(80) This delay may in some measure be accounted for, by the reservations of land made by the State, to enable her to fulfil her engagements to the officers and soldiers of the Maryland line.

(81) Mr. Cooke's letter of declension, which was, by the vote of the House of Delegates, directed to be recorded on its Journals, contains some interesting statements, in relation to the extent of territory dependent upon this controversy. Yet, although it purports to be founded upon an examination of the whole question it contains some erroneous statements. In adverting to the exploration of the country by colonel Cresap, he states that Cresap, judging more from appearances, than from any actual survey, reported in favour of the north branch, and that it was for some time afterwards supposed to be the first fountain. In this, he is entirely in error. Cresap was examined before the Council in 1753, and made an actual survey in 1771; and on both occasions decided in favour of the south branch. Nor do our records show that he was examined on this subject, or employed for this purpose at any other time; or that there ever was a period in the province, when the north branch was held to be the first fountain. Wherever the subject is alluded to, the contrary opinion is universally maintained. As this letter is valuable, not only on account of the facts which it sets forth, but also because it contains the opinions of Mr. Cooke, who was a distinguished lawyer, as to the effect produced upon the claim of Maryland, by the prior occupancy and long continued possession under the Fairfax grant, it is here subjoined.

Carroll and Chase declined acceptance, and thus the State was again left without commissioners until 1801, when by a resolution of that year, the power of appointment was given to the governor and council.

Messrs. Duvall, McDowell and Nelson, were now appointed commissioners, and a correspondence upon the subject took place be-

To the Honorable the Senate and House of Representatives of Maryland:

GENTLEMEN: By a resolve of the Legislature, passed at the last session, William Pinkney and Philip Barton Key, Esquires, together with myself, were "appointed commissioners on the part of this State to meet" such commissioners as might be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the two governments, the western and southern limits of this State, and the dividing lines and boundaries between this State and the said commonwealth; and also to settle and adjust any claim of this State, on the said commonwealth, to territory within the limits of the other.

In the execution of this trust, I have thought it my duty, not only to acquire authentic information of the nature of the possessions held under the Virginia grants of land, within the limits claimed by this State, but also to examine carefully the laws of nature and nations, that it might be known, how far those laws would affect the claim of this State, before such claim was formally made, or prosecuted, in case it could not be otherwise adjusted by an amicable settlement.

The true boundary between this State, and the State of Virginia, depends on the "single" question, which is the first fountain of the river Potowmack? A question which has hitherto rested upon opinion only, without any effectual step having been taken to ascertain the same. Many years ago, the late colonel Thomas Cresap was employed by the proprietor of Maryland to explore the country, and to report the facts that might lead to a decision on this subject; but the country then being little known, and in the possession of savages, it is probable he judged more from appearances, than from any actual survey of it; he reported in favour of the north branch, and from some time after, that was generally supposed to be the first fountain of the river Potowmack. Afterwards, however, a different opinion prevailed, and the late proprietors of Maryland always claimed the land, and in some instances made grants thereof, lying between the north and south branches of that river. At length, a negotiation commenced between the proprietor of Maryland and Lord Fairfax, the then proprietor of that part of Virginia, respecting this subject; and by consent it would have been established, that the first fountain of Potowmack was at the head of the south branch of that river, if the crown of Great Britain had not been interested in the question, and therefore it became necessary to lay the circumstances then existing before the King and Council, and to obtain their approbation and concurrence before any effectual regulation could take place; and while matters were thus suspended, the revolution commenced, which finally deprived all parties of their interest in the subject.

During the war, the citizens of Virginia began to take up, and immediately the peace to settle, the land between the north and south branches of Potowmack; and the whole of that country, containing 462,480 acres of land hath ever since been and now is, occupied and claimed by the State of Virginia, or persons holding under grants issued by that State. But if upon a full investigation of this subject it shall be found that the first fountain of Potowmack is at the head of the north branch of that river still it is of essential consequence to this State, to have the real head or fountain of that branch of the river fixed and well ascertained. There are three springs, or small rivulets, that unite after running a small distance; and the possessions under the title of this State are at present confined to a meridian line drawn from the most southern of those springs, and the lands to the westward of that meridian line are taken up and held under grants issued by the State of Virginia, although both the other springs extend further to the westward, and one of them near three miles. Should this last mentioned spring be deemed the first fountain from whence a meridian line is to be drawn for our western boundary, it will give a country, in addition to what the State now possesses, of three miles broad, and upwards of thirty miles in length.

tween governors Mercer and Monroe. The result of it was,
1001 that a resolution was passed by Virginia, authorizing the appointment of commissioners to meet those appointed on the part of Maryland; but limiting their powers to the adjustment of the western line. Virginia was unwilling even to enter into a discussion of her right to the territory between the two branches, whilst Maryland went upon the broad principle of referring
1002 the whole subject to the commissioners. The power of the Virginia commissioners being thus restricted, governor Mercer deemed it unnecessary to request a meeting of the commissioners; and the negotiation ended. (82.) At December session, 1803, this correspondence and the acts and resolutions of the two States to which it related, were referred to the consideration of a committee of the House of Delegates of Maryland, by whom a report was made, recommending the running of a provisional boundary line (by agreement with Virginia) to start from the extreme western source of the north branch, which should be held to be the boundary line of the two states, until further and definitive measures could be taken to ascertain the southern boundary. (83.) This re-
1003 port was not acted upon; and the subject does not appear to have been revived until 1810, when another resolution was passed similar to that of 1801, under which nothing was done; and the subject again slept until it was revived by Maryland in the Act of 1818, chap. 206.

This State had now become wearied with her efforts to reclaim the territory south of the north branch; and hence this Act of 1818 in proposing to Virginia the appointment of commissioners, agrees to adopt the most western source of the north branch, as the point from which the western boundary shall start. At December session, 1821, of the Assembly of Virginia, an Act was passed, which purported to meet and reciprocate this proposition of the State of Maryland, but was, in fact, materially variant from it. (84.) The Virginia Act did in fact beg the whole question, and left nothing open

On reviewing the law of nature and nations, it will be found, that prior occupancy can give no title to Virginia in this instance; nor any length of time bar the claim of this State, if it is otherwise well-founded. Political laws in this, and in most other countries, regulate this subject among the citizens of their respective states; but it cannot be done between independent governments, unless by treaty.

Should the legislature of this State persist in the wish to settle the bounds of this State and Virginia, in the manner proposed by the resolve of the last session, (and which has been delayed by the State of Virginia not having made any appointment of commissioners for that purpose,) it will be necessary to appoint another commissioner in the place of Mr. Pinkney, who is now absent on public business, and some other person instead of myself, as it will not be convenient to me to attend further to the subject.

WILLIAM COOKE.

14th November, 1796.

(82) See the letter of governor Mercer of June 5th, 1802, and the executive communication of November, 1802, to the General Assembly in Council Chamber Records.

(83) Journals of the House of Delegates.

(84) Acts of Assembly of Virginia at December session, 1821, Chap. 14, passed 28th February, 1822.

for negotiation. The Act itself undertook to determine the point from which the line should start and left nothing to the commissioners, but the power of locating it in conformity to its instructions. They were specially instructed to commence the western boundary *at a stone planted by Lord Fairfax on the head waters of the Potomac;* and thus they were tied down to the old adjustment, between Fairfax and the crown. The Virginia Act was therefore entirely different from that of Maryland, which directed the commissioners to begin at the most western source of the north branch, be that where it might; and being dissimilar, it did not justify the appointment of commissioners on the part of Maryland. Our Act of 1818 expressly directed, that the appointment, on the part of this State, should be made only after Virginia had embraced its propositions by the passage of a similar act: and no act could be considered similar, which did not confide to their commissioners the same powers of adjustment, and adopt the same basis of settlement. This was, however, overlooked by the executive of Maryland; and commissioners were appointed on the part of both States, who assembled on the head waters of the north branch in the sum-
1004 mer of 1824. (85.) Upon the instant of their assemblage, it was discovered that the positive instructions to the Virginia commissioners would operate as a bar to all further proceedings. The Maryland commissioners came instructed to locate the western line from the most western source of that branch, while those on the part of Virginia were limited to Fairfax's location, without regard to the inquiry: *"whether it was or was not so located."* Fairfax's stone is not in fact planted at the extreme western source; and even had it been so situate, it was scarcely consistent with the rights and dignity of Maryland to have entered into an adjustment with commissioners who were thus restricted without regard to the question of right. Maryland having by her act offered to relinquish all claim to the territory south of the north branch, it was not to be expected after this concession, that she should adopt as the source of that branch, a point determined as such, by her interested adversaries, during the progress of the controversy. The spirit of amity and concession, which had characterized all her proceedings in her repeated efforts to close this controversy, had been met at every step, by one of obstinate adherence, on the part of Virginia, to the full extent of her pretended claims: and it did not become her dignity as a State, to submit herself implicitly to any terms which the latter might dictate. Her commissioners therefore properly insisted, that the whole question, as to the true source of the north branch, should be thrown open for investigation; and this being declined, the negotiation ended.

So rests the controversy even to this day; and the proffer of Maryland to confine herself to the north branch as contained in her Act

(85) The commissioners who acted on this occasion, on the part of Maryland, were Ezekiel Chambers and James Boyle, Esquires. Chancellor Johnson, who was joined with them in the commission, died when on his journey to the place of assemblage, to the deep regret of his fellow-citizens, amongst whom he was conspicuous for his abilities as a lawyer, and his worth as a man.

of 1818, being thus rejected by Virginia, she is remitted to her original rights. Hitherto the course of this State has never contemplated aught but an amicable adjustment; and she has already made every advance towards this, except that of unqualified submission to the demands of Virginia. Every effort has failed; and the inhabitants of our western borders begin to feel more sensibly every day, the consequences of this protracted contest. It is a matter of reproach to the two States that this boundary so extensive and important, should be unsettled to this day; and to Maryland it espe-
1005 cially belongs to redeem herself from this reproach by adopting on the instant, some decisive measures, to bring about its adjustment. If she is prepared to surrender all her claims,, and to adopt the location of Virginia, her border citizens may well say: *"If it were done, when 'tis done, then it were well it were done quickly."* If, on the other hand, she intends no such surrender, it is full time to rise in vindication of her rights. In the progress of this contest, the conduct of Virginia towards her, has not been characterized by that generous and liberal spirit which has been so conspicuous in her other transactions. Our citizens would deeply regret the necessity of an adversary proceeding against a sister State, which has held so high a place in our affections; yet in reviewing the conduct of our State, they will find no cause for censure. As to the *chartered* extent of Maryland, there can be little room for doubt. *"The first fountain of the Potomac"* is evidently a descriptive term intended to designate the most westerly source, and applies to the south branch, the source of which lies considerably west of that of the north branch. The extent of territory lying between the two branches, is estimated at *half million of acres*, including some of the most fertile lands of Virginia. In the event of an adversary proceeding, the claims of Maryland will of course extend to her chartered limits; and the sovereignty over this extensive country, will be the high prize for the victor. The citizens of our sister State, will perhaps smile at pretentions so extensive; yet that they were once well founded can scarcely be doubted, and if so, it will be difficult to show in what way they have been lost. If this be admitted, Virginia can rest her claims only upon prior occupancy and long continued possession; and these will avail her but little in such a case as the present.

By some the opinion is maintained, that as between independent states or nations, one cannot acquire a title to the domain of the other merely by prior occupancy. In the letter of Mr. Cooke above given, it will be seen that he adopts this doctrine, and asserts broadly, "that if the claim of the State be well founded in its origin, no lapse of time nor continuance of possession on the part of Virginia can bar that claim." The contrary opinion is maintained by Vattel: and is probably the correct doctrine as ther explained
1006 and restricted. (86.)

The doctrine of prescription can only apply to a case of clear and unequivocal abandonment of possession, on the one part, sustained by proof of long, undisputed and uninterrupted adversary

(86) Vattel, Book 2d, chap. 11th, sec. 147 to 151.

possession by the other; and this has never been the character of the Virginia possession. The claim was disputed from its very origin, and the territory was occupied under circumstances from which no inference of acquiescence, on the part of the proprietary of Maryland can fairly be drawn. From the year 1753 to the revolution, the proprietary and his government continued to assert the Maryland claim, and were restrained from making grants of the disputed territory, only through apprehension of the interference of the crown, and because of the adjustment between the crown and Lord Fairfax. And if any doubts could arise from the possession of Fairfax, anterior to the revolution, they are all removed by the constitution of Virginia adopted in 1776, which in its 21st Article, after making certain reservations as to the navigation and use of the Potomac and Pocomoke, &c., expressly cedes and confirms to the State of Maryland, "*all the territory contained within its charter, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which may at any time heretofore have been claimed by Virginia.*"

Thus then at the revolution, by the express concession of the State of Virginia, the claims of Maryland to her charter limits existed in their full force; and are sustained by an express surrender of all counter claims which Virginia might have. The reservations made by her, have all been gratified by the compact of 1785; and the claims of Maryland, so far as they rest upon her charter, are therefore doubly armed. From that period to the present, it will be apparent, from the review of the transactions of the two States already presented, that the claim of Maryland has never been relaxed, except by an offer to compromise, which was not accepted, and therefore cannot in any wise affect her right; and that there is nothing in the character of the Virginia possession, from which an aban-
1007 donment of this claim can reasonably be presumed.

If, then, her rights under the charter retain their original vigour, unimpaired by the lapse of time or the occupancy of Virginia, the Constitution of the United States appears to present remedies, by which the extent of those rights can be readily determined. The claim of Maryland, as the successor to the proprietary rights, extends both to the right of soil and the jurisdiction: and it seems to be now well settled, that where there is a controversy between the States involving the right of soil, the Supreme Court of the United States has original jurisdiction over it, and one State may in that court enforce such a right against another state of the Union. (87.) It has been doubted whether upon such a right as that of mere sovereignty or jurisdiction, a State could proceed at law; but even in such a case, it has been held that there is at least an equitable remedy by bill praying to be quieted as to the disputed boundaries. (88.) Besides this direct mode of bringing the question to an issue, there is also an indirect mode of producing a decision of it, which would eventually be equally as efficacious. It is but necessary for the State of Maryland to make a grant within the disputed

(87) 3d Dallas, 412. 4th Dallas, 3.
(88) Same.

territory, upon which a suit could immediately be instituted against those claiming it under a Virginia grant; and the question of superior right to grant would at once come up. It being then a case of conflicting claims under grants of different states, it might be at once translated to the proper Circuit Court of the United States; and thence (if of sufficient value,) to the Supreme Court for final determination. (89.)

These are the modes of proceeding open to Maryland, and if she still retains, and intends to adhere to her original claim, she should be prompt in the prosecution of it. All further hopes of obtaining it by concession are at an end; and whatever course she may
1008 resolve to adopt, should be at once determined upon.

What the boundary line may be, is not a matter of such moment to her citizens, *as that it should be definite and undisputed.* In any issue of the contest, it would be the duty of Maryland to confirm all the anterior grants from the proprietaries of the Neck. No attempt would be made to disturb titles so derived: and the contest would be mainly for the sovereignty of the territory. Thus respecting and protecting private rights, her claim would be stripped of all its harshness; and, if successful, whilst it enlarged and enriched her territory, would be a monument of her justice.

1009 EXHIBIT F.

No. 126.

Resolution Appointing a Select Committee of Five, Relative to the Southern and Western Limits of the State.

Resolved, That a committee consisting of five be appointed to enquire and report to the senate, what are the true southern and western limits of the province of Maryland, according to the original charter from the King of Great Britain to Lord Baltimore.

Resolved, That said committee be instructed to enquire and report to the senate, whether the southern and western limits of the country as defined in the original charter from the King of Great Britain to Lord Baltimore, ought now to be taken, and acknowledged as the southern and western limits of this State, and, if not, to ascertain and report to the senate, what are the true southern and western limits of this State.

Resolved, That said committee be instructed to enquire and report to the senate, what is "The first fountain of the Potomac," as mentioned and intended by the original charter from the King of Great Britain to Lord Baltimore, as far as said committee may be able to ascertain; and the point at which the meridian for the western boundary of this State ought to start.

Resolved, That said committee be instructed to enquire and report to the senate, whether our sister state of Virginia, has, at any

(89) Constitution of the United States, Article 3d, section 2d, and Act of September 24th, 1789, section 12th.

time, by her constitution, or laws, made any recognition of the right of Maryland, to all the territory contained within the original charter from the King of Great Britain to Lord Baltimore.

Resolved, That said committee be instructed to enquire and report to the senate, whether any survey can be found in the archives of this State; which was made to ascertain the courses of the south and north branches of — Potomac, with a meridian through the heads of each branch, to determine their relative extent to
1010 the west; and if any such can be found, to report to the senate, what time, and by whom made; and what evidence it affords, to illustrate and establish "The first fountain of the Potomac."

Resolved, That said committee be instructed to enquire and report to the senate, the nature of the dispute, touching these limits, between Frederick Lord Baltimore and Lord Fairfax, up to the close of the revolution, and what steps have been taken since, from time to time, by this State, and our sister State of Virginia, to settle our southern and western limits—specifying particularly, the different periods of negotiation, the result of each, the present condition of the dispute; and whether it is necessary for the peace and security of our people, and the dignity of the State, to have these limits, or either of them, defined; and what step ought to be taken by this State to procure a final adjustment thereof.

No. 128.

Report of Special Committee, and Resolutions Relating to the Southern and Western Limits of This State.

The committee to whom sundry resolutions were referred relative to the southern and western limits of this State, have had the same under consideration, and respectfully report:

That they have arranged their enquiry in order as proposed by each resolution, beginning with the first, as best calculated to keep in view the object of the senate, and to present to the consideration of both branches of the legislature, the whole mass of facts and circumstances in consecutive form, starting from the root of the title of Maryland to its domain through all adversary or other pretensions.

1st. Your committee have been instructed to inquire and report to the senate "what were the true southern and western limites
1011 of the province of Maryland, according to the original charter from the king of Great Britain to Lord Baltimore."

By an examination of the third section of that charter, your committee find the grant to Baltimore so defined by natural boundaries, leading from one point to another all round the grant, that it has produced in your committee no little surprise to learn from the early history of the province, the legal perplexities in which the proprietary was involved, concerning them. They were indelible signs of nature, skirted along the whole grant, and were doubtless intended

to put out of the reach of all controversy the intention of the grantor in carving out of his immense domain a territory for Lord Baltimore. The third section declares that it was intended to contain "all that part of the Peninsula, or Chersonese, lying in the parts of America, between the ocean on the east, and the bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory or head land called Watkin's Point situate upon the bay aforesaid, near the river Wighco on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the equinoctial, where New England is terminated; and all the tract of that land within the metes under written, (that is to say,) passing from the said bay, called Delaware bay, in a right line by the degree aforesaid, unto the true meridian of the first fountain of the river of Potomac, thence verging towards the south, unto the further bank of the said river, and following the same on the west and south unto a certain place called Cinquack, situate near the mouth of said river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called Watkins' Point." Looking at this horoscope of Baltimore's charter, in search of its southern and western limits, we are cautiously told to begin on that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the equinoctial, and are directed to pass from the said part of said bay, which lieth under the said degree, and by the said degree unto the true meridian of the first fountain of the river Potomac; although it is prob-
1012 able but little was known of the upper fountains or tributaries of the Potomac, to the King of Great Britain, by actual observation and inspection, made by his agents, yet no doubt it was well ascertained or believed, that it flowed from the west, and its courses and first fountain with the greatest relative extent to, the west, were intended to be sought for, as your committee believe, by actual survey due west along the degree aforesaid, until a true meridian could be got to strike the first fountain of the river Potomac, having the greatest extent to the west, without regard to any branch or tributary of that river. For notwithstanding the confines of the grant were sufficiently guarded by natural boundaries and signs, it was evidently intended to be better defined at some other time by ascertaining their precise situation. Your committee believe that it will clearly appear from a subsequent part of this report, that the stream commonly known by the name of the south branch of the Potomac, flows from the first fountain having the greatest extent to the west, and is indeed Potomac proper, and the north branch is but a tributary of that noble river. Not knowing exactly what would be the effect of the calls of Baltimore's charter, the King abundantly explained them, as well as all other words for the benefit of his favorite in the 22nd section, in which all his courts and judicatories are instructed to give the whole grant such interpretation as should be most beneficial and profitable to the grantee. And by starting the meridian so as to strike the first fountain of the South Branch,

would have increased the proprietaries domain, according to an estimate of the late William Cooke, four hundred and sixty-two thousand four hundred and eighty acres of land. If therefore the South Branch of the Potomac, by actual survey, should have been found not only flowing from the first fountain having the greatest relative extent to the west, but actually yielding to Baltimore an increased extent of domain of four hundred and sixty-two thousand four hundred and eighty acres of land more than he could have obtained by running a meridian to the first fountain of the North Branch, your committee believe it is scarcely possible for the human mind to doubt that the whole country north of the South Branch, was originally included in Baltimore's charter. If this should be demon-
1013 strated by the facts submitted in this report, it will follow that the meridian for the western limit of the charter, ought to have struck the first fountain of the South Branch, it having the greatest relative extent to the west, thence verging toward the south unto the further bank of said river, and following the same for the southern limit on the west and south.

2d. In regard to the information sought by the second resolution, your committee believe and respectfully report, that the southern and western limits of the country, as defined by the original charter from the King of Great Britain to Lord Baltimore, ought now to be the southern and western limits of this State, *if viewed as a strict matter of right in an adversary proceeding against our sister State of Virginia.* The right to grant the eminent domain by the King of Great Britain to Lord Baltimore, at the date of the charter, was incontestible, and although it was the source of some dissatisfaction amongst the colonists of Virginia, from causes not necessary to repeat in this report, yet it was a matter conceded on all hands long before the revolution, that the grantee was entitled to all the domain included in his true legitimate boundaries, as mentioned and intended by the charter, wheresoever they might be found: and there can be no question that the same right of domain within the true limits of the charter, passed to this State after the revolution. This as far as your committee have been able to discover, was at no time doubted on the part of Virginia. And so far as your committee have been able to learn, this State has done nothing to divest herself of this domain. It will appear in a subsequent part of this report, that the planting of the Fairfax stone, was done without any authority from the elder Baltimore, or from Frederick Lord Baltimore. The latter, it appears from the council proceedings of Maryland, instructed his Governor, Sharpe, in seventeen hundred and fifty-three, to "keep a good look out, and prohibit settlements under Fairfax, in the country north of the South Branch," and this State in the convention when our constitution was formed, passed several resolutions more particularly referred to hereafter, amounting to a solemn protest against any claim of Virginia to the country within our chartered limits. Nor is there any well founded claim to the country on the part of Virginia, by usucapation and prescription
1014 known among nations. Usucapation is the acquisition of domain founded on a long possession, uninterrupted and un-

disputed, from which there may be presumed desertion. Such principles would suppose that this State had entirely neglected that which belongs to her, and had left it with all the appearances of a thing utterly abandoned. But every important event in our history touching this subject shows a continual claim on our part down to the year eighteen hundred and eighteen, when certain matters of compromise were offered, but not being accepted, remitted this State to her original rights.

3d. In regard to the duty devolved upon your committee by the third resolution, to ascertain what is the first *fountain* of the Potomac, it is scarcely necessary to remind the Senate, that the true boundary between this State and the State of Virginia has always depended upon that single question, which could have been settled at any time by an actual survey of the waters, if made in a spirit of sincerity and candor by both States, and with such an interpretation of the charter as was manifestly intended. Your committee are of opinion, that there is a moral obligation upon States, as well as upon individuals, to do justice to each other, and if it was a moral duty on the part of Virginia, at any time promptly and with good faith to settle that single question, by all the means within her power, that duty and moral obligation is yet in force, and cannot be repealed without the consent of both States. Vattel, in his chapter upon the observance of justice between nations, has declared, "that justice is the basis of all society, the sure bond of all commerce. Human society, far from being an intercourse of assistance and good offices, would be no longer anything but a vast scene of robbery, if no respect were paid to this virtue, which secures to every one his own. It is still more necessary between nations, than between individuals, because injustice produces more dreadful consequences in the quarrels of these powerful bodies. All nations are therefore under a strict obligation to cultivate justice towards each other, to observe it scrupulously, and carefully to abstain from everything that may violate it. Each ought to render to the other what belongs to them, to respect their rights, and to leave them in the peaceable enjoyment of them." Vattel, Book 2d, chapter 5.

1015 There are some conquerors who aspire after nothing more then extending their dominions, but it was not expected that states who struggled together through the pangs of a revolution, would, at any time, endeavor to over-reach and out bargain each other in the settlement of their limits, when the whole matter to be first ascertained was nothing more than the first fountain of a river flowing from a mountain, which could be seen by any one sincerely disposed to understand the whole truth of the matter. To the doctrines so well settled and defined by Vattel, all civilised communities, as separate states, without any common bond of union, are bound to yield; and much more two States, being neighbors, who are cemented by that bond of union, which holds together our whole confederacy.

4th. In regard to the information sought by the fourth resolution, your committee further report, that they have examined the constitution of Virginia, and find the territorial limits of this State referred

to, in the twenty-first section, in the following words: "The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pocomoke, with the property of Virginia shores or strands bordering on either of the said rivers; and all improvements which have been or shall be made thereon." The King of Great Britain being entitled to the whole eminent domain of the country, granted a part of it to Lord Baltimore, by his charter. This right of the King was incontestible, and Virginia had no claim to any territory within the limits of Baltimore's charter, but inasmuch as there had been some dissatisfaction by some individuals in Virginia, in regard to the charter, it was friendly and proper for her, at that time, to make this express recognition of our limits, and had a tendency to remove all difficulty of misunderstanding that could possibly arise on the subject, through the perils of the revo-
1016 lution. In the same section of the Virginia constitution, it is declared, that "the western and northern extent of Virginia, shall, in all other respects, stand as fixed by the charter of King James the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the courts of Great Britain and France, in the year one thousand seven hundred and sixty-three."

The claim of the English to the continent of North America, was founded upon the discovery of Cabot in the year fourteen hundred and ninety-eight; and the name Virginia was, at one time, applied by the English to the whole continent; and sundry companies had from time to time, before the revolution, been chartered with permission to plant colonies within the limits of Virginia, and for other purposes. Amongst other charters, that of King James the first, mentioned in this article, had been granted, but was afterwards, as well as all other charters of that kind, annulled; and the rights granted by them revested in the crown, and before the date of Baltimore's charter, Virginia became a royal government. It is therefore clear that the ground taken by Virginia, in the twenty-first article of her constitution, was not tenable, except as a recognition of the Maryland claim. The general convention of delegates and representatives, who framed the constitution of Virginia, met at Williamsburgh on the sixth day of May, seventeen hundred and seventy-six, but a short time before the declaration of independence, when Virginia was in her first love as a sister state, it was fit and proper for her to make such a recognition. But her reservation in regard to the use of the rivers Potomac and Pocomoke, were wholly gratuitous; and the two States afterwards, by compact, on the twenty-eighth day of March, in the year of our Lord, one thousand seven hundred and eighty-five regulated and settled the jurisdiction and navigation of those rivers, and that part of Chesapeake bay within the territory of Virginia. If then Virginia had no right to any territory within the limits of Baltimore's charter, and made the recognition purely from

abundant caution, and to prevent quarrels and misunderstandings with her sister Maryland during the revolutionary struggle, it is nevertheless a recognition of our territorial limits within the charter, to the utmost extent of our true boundaries, when fully ascertained and defined. Or if she had any possible imaginary right to
1017 any territory within the limits of our charter, it was all absolutely ceded and released by her constitution to Maryland, although becoming subject to the compact made afterwards in seventeen hundred and eighty-five. But even in the struggle of the revolution, Maryland did not forget to enter her solemn protest against the proceedings of Virginia, in regard to her territorial limits, and on the thirtieth of October, seventeen hundred and seventy-six, in the Maryland Convention, which met to form our constitution, the twenty-first article of the constitution of Virginia, referred to in this report, was taken into consideration, and the following resolutions as a protest, were unanimously adopted.

"Resolved unanimously, that it is the opinion of this convention, that the State of Virginia, hath not, any right or title to any of the territory, bays, rivers, or waters included in the charter granted by his Majesty Charles the first, to Caecilius Calvert, Baron of Baltimore."

"Resolved unanimously, that it is the opinion of this convention, that the sole and exclusive jurisdiction, over the territory, bays, rivers, and waters, included in the said charter, belongs to this state, and that the river Potomac, and almost the whole of the river Pocomoke, being comprehended in the said charter, the sole and exclusive jurisdiction over the said river Potomac, and also over such part of the river Pocomoke, as is comprehended in the said charter, belongs to this State, and that the river Potomac, and that part of the Chesapeake bay, which lies between the Capes and the south boundary of this State, and so much thereof as is necessary to the navigation of the rivers Potomac and Pocomoke, ought to be considered as a common highway free for the people of both States, without being subject to any duty, burthen or charge, as hath been heretofore accustomed."

"Resolved unanimously, that is the opinion of this convention, that the very extensive claim of the State of Virginia to the back lands, hath no foundation in justice, and that if the same or any like claim be admitted, the freedom of the smaller States, and the liberties of America, may be thereby greatly endangered."

1018 It is manifest that Virginia had no authority to give, take away, or reserve, any portion of the country which was within the limits of Baltimore's charter. But that part of her constitution may be fairly and properly construed to be an express recognition of the right of Maryland to all the territory contained "within the original charter from the King of Great Britain to Lord Baltimore." The compact of seventeen hundred and eighty-five, between the two states was made to regulate and settle the jurisdiction and navigation of the Potomac, leaving the single question of the first fountain of that river open, to be settled by some other negotiation. It is indeed, matter of great surprise to your committee, that the Maryland

commissioners, at the time of that compact, did not make the decision of that single question preliminary to every other arrangement.

5th. In obedience to the request of the Senate, expressed in the fifth resolution, your committee, upon inquiry, found in the Land Office of this state, a survey of the two branches, which appears to have been made by Colonel Cresap, some time, in the year of our Lord one thousand seven hundred and seventy-one. The survey was evidently made with the knowledge and approbation of the proprietary, and probably under his express direction; but for what purpose it does not distinctly appear. But if made with fidelity, of which there is no reason to doubt, from the well known and established character of Colonel Cresap, it illustrates, and has established beyond all reasonable doubt, that the South Branch flows from the first fountain of the Potomac. "It presents a very accurate view of the courses of the two branches, through the heads of which meridians are drawn, for the purpose of determining their relative extent to the west. From the year seventeen hundred and fifty-three, it appears to have been continually held on the part of Maryland, that the South Branch was the most western source;" and therefore the first fountain: "But the survey of seventeen hundred and seventy-one appears to have been the first actual examination and survey of the two branches, which was made with this view. The papers connected with the settlement of the expenses of the survey, shew that it was made under the direction of the proprietary government; and it seems probable
1019 that it was made, both for the purpose of informing the proprietary as to the true location of the branches, and of furnishing a basis for any application which might be made by him to the King in Council."—M'Mahon's History of Maryland, vol. 1st, page 57. Your committee invite the members of both branches of the legislature to examine this survey. Though the surveyor who made it, and the contending Lords whose interests were involved in it, have long since slept with their fathers, this survey yet speaketh in language sufficient to remove every involution of darkness which has at any time concealed the true and single question, "Which is the first fountain of the river Potomac?" Both branches are delineated on the plat with the meridians through the head of each; and the meridian through the head of the South Branch is near thirty miles west of the one through the head of the North Branch.

6th. In regard to the information sought by the sixth resolution, your committee further report—That they have examined the nature of the dispute touching the southern and western limits of the Maryland charter between Frederick Lord Baltimore, and Lord Fairfax, up to the close of the revolution, as well as the other matters referred to in that resolution. Your committee having already distinctly adverted to the origin of Lord Baltimore's charter, and the common call in that charter for the first fountain of the river Potomac, beg leave also to make a brief reference to the origin and calls of the letters patent issued for lands in the Northern Neck of Virginia to certain persons from whom it passed into the Fairfax family. In the first volume of the revised code of Virginia, these letters patent are recited; by which it appears that the grantors of the grant under

whom Fairfax claimed, were Lord Hopton, Lord Jermyn, Lord Culpepper, Sir John Berkeley, Sir William Morton, Sir Dudley Wyatt, and Sir Thomas Culpepper; and the territory granted was, "all that entire tract, territory or parcel of land, situate, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough, or Potomac river; the courses of the said rivers as they are commonly called and known by the inhabitants, and the descriptions of those parts, and Chesapeake Bay." The title having passed by the death of some of the proprietors, and by purchase from others of them, to Henry Earl of St. Albans, John
1020 Lord Berkeley, Sir William Morton, and John Treatherway, Esquire, they surrendered the original grant, for the purpose of receiving a new one for the same territory, for which they afterwards obtained letters patent. The title to the whole having vested in Thomas Lord Culpepper, a new patent was granted to him by King James the second, and "from him it descended to his daughter and only child, who was married to Lord Fairfax, and thus passed into the Fairfax family." The grant of domain to Lord Baltimore, calling for the first fountain of the Potomac, and the grant of the right of soil afterwards, "of all that entire tract, territory or parcel of land, situate, lying and being in America, bounded within the heads of the rivers Rappahannock and Potomac," were not at all inconsistent, nor could they by any rational construction clash with each other. The grant under which Fairfax claimed, having nothing upon the face of it that could excite the jealousy of Baltimore, and being much engaged with the Penns' in settling his northern limits it does not appear that he thought anything about it at first; and no adversary or other proceedings were at any time instituted by Fairfax or those under whom he claimed, against Baltimore, to settle any dispute, in regard to the division of the grant of the Northern Neck, and that of the Maryland charter. There was a dispute between Fairfax and the Governor of Virginia, relative to conflicting territorial claims which terminated by proceedings to which Baltimore was no party; and of the existence of which he and his government appear to have had no knowledge before they were terminated. Mr. M'Mahon in his History of Maryland, says it appears in seventeen hundred and thirty-three, a petition was preferred by Fairfax to the King in Council, praying that a commission might issue for running and marking the dividing line between his grant and the "Province of Virginia; and that the commission was accordingly issued, and the survey made and reported in August, seventeen hundred and thirty-seven. In December, seventeen hundred and thirty-eight, these reports were referred to the consideration of the council for plantation affairs, by whom a report was made in seventeen hundred and forty-five, which determined the head springs of the Rappahannock and Potomac, and directed that a commission should isue to extend the line. This report was confirmed by the King in Council, and the line
1021 being adjusted in conformity to it, an act was passed by the General Assembly of Virginia, in the year seventeen hundred and forty-eight, which adopts the order in council, and confirms

all previous grants made by the Crown, of land lying within the limits of the Fairfax grant." The judgment of the King in form, is not known, except so far as it is recited in the Virginia act of seventeen hundred and forty-eight; that act recites several things in the following words: "*Whereas*, in the late dispute and controversy touching the limits and boundaries of the several letters patent granted by their late Majesties King Charles the Second, and King James the Second, unto the ancestors of the right Honorable Thomas Lord Fairfax, it hath been adjudged and determined by his present Majesty in Council, that the said letters patent do include all that tract or territory of land between the rivers Potomac and Rappahannock, and the line now marked from the head spring of the said river Potomac to the head spring of the Rappahannock, commonly called the Conway, in which said tract or territory of land as is before described, many adventurers and planters have taken up great quantities of land, and obtained grants and patents thereof from the Crown under the seal of this colony; *And whereas*, the said Thomas Lord Fairfax hath consented before the King in Council, that the several grants and patents made by the Crown of the lands included in the boundary aforesaid, should be confirmed to the several grantees, their heirs and assigns." The judgment of the King as recited in this act, although it is not so precise in the location, as the letters patent to Fairfax, ought nevertheless to be taken, as intending to fix the limits according to the letters patent. The judgment says, "that the said letters patent do include all that tract or territory of land between the rivers Potomac and Rappahannock;" the letters patent, "all that entire tract, territory or parcel of land, situate, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough or Potomac river." Now it is fair to presume that the King intended nothinmore than "the heads of the rivers Rappahannock and Quiriough or Potomac river," when he used the words, "between the rivers Potomac and Rappahannock." At all events in the opinion of your committee it gave no authority to plant the Fairfax stone
1022 on the North Branch, where it is now found. That was an after thought, and a contrivance by two interested parties, who had previously made litigation before the King for their mutual benefit. But it seems this act of seventeen hundred and forty-eight, intended to make the King declare in his judgment, that the boundaries of the several letters patent granted unto the ancestors of Fairfax extended to all that tract or territory of land between the rivers Potomac and Rappahannock, to enable Virginia and Fairfax to plant a stone at the head of the North Branch, when by the original grant itself it was limited to "all that entire tract, territory or parcel of land, situate, lying and being in America, and bounded within the heads of the rivers Rappahannock and Potomac." It is plain such a judgment with the construction given to it by Virginia and Fairfax was not authorized by the original letters patent, which were better defined and understood. But being in a controversy of Virginia on one side, who was interested in extending her jurisdiction, and Lord Fairfax on the other, who was interested in

the increase of his lands, it is not at all surprising that it was so adjusted. It enlarged the jurisdiction of Virginia, and Fairfax gained the whole country between the South and North Branch. It appears also, by the act referred to, that Virginia and Fairfax ran a line by consent, from the head spring of the said river Potomac to the head spring of the Rappahannock; beginning no doubt, at the place on the North Branch, which has since been known by the Fairfax stone. The two interested parties, by a law suit which appears to have been carried on for their mutual benefit, got the King to decide that it shall be "between the rivers Potomac and Rappahannock," instead of "the heads of the rivers Rappahannock and Potomac," and then ran a line making the head spring of the Potomac on the North Branch, where the Fairfax Stone is now found. This was a plain usurpation of the rights of the elder Baltimore, being obtained through a decision in a cause to which he was no party, and of which he had no notice, and which afterwards received the protest of his successor, which was not made by his predecessor in consequence of his death. Sometimes in the year seventeen hundred and forty-eight, a land office for granting lands in the Neck was opened by Fairfax, after the *ex-parte* settlement of the boundary line between him and the government of
1023 Virginia was made, and in which the elder Baltimore had no part. From this office grants were issued which extended so far to the "west as to raise the question of location of the head of the Potomac," which caused Frederick Lord Baltimore, after his accession to the right of the Maryland domain, to turn his attention "to its western limits," and "in his instructions to Governor Sharpe, which were presented by the latter to his council in August, seventeen hundred and fifty-three, he alludes to the Fairfax grant, and remarks, "that he had been informed that the government of Virginia had undertaken to ascertain the limits of his charter; and that the commissioners who had been appointed for this purpose, instead of stopping at the South Branch, which runs from the first fountain of the Potomac, had gone even to the North Branch; that if any such adjustment was made, he had no knowledge of his predecessor being a party to it, and therefore concluded by it." He therefore directed the governor "to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise Lord Fairfax of his desire to adjust that boundary with him;" and he at the same time commands him to keep a good look out, and prohibit settlements under Fairfax in the country north of the South Branch. These instructions being laid before the council, in order to a compliance with them, they endeavoured to collect information with reference to the relative extent of the North and South Branches of the Potomac, and for this purpose they summoned before them Colonel Thomas Cresap, one of the settlers in the western extremity of the State, who was supposed to be familiar with the course and extent of these branches. He accordingly attended at their next session in September, seventeen hundred and fifty-three, and informed them, that in his opinion the South Branch of the Potomac was the longest stream even from its mouth, and ran

about sixty miles further in a north-western direction than did the North Branch. Thus informed, the governor addressed a letter to Lord Fairfax, in which after apprising him of the instructions received from the proprietary, he remarks, that the information which he had obtained induces him to believe that there has been some mistake in fixing the fountain head of the Potomac at the source of the North Branch, as the relative length of the two
1024 branches, and other circumstances concur to shew that the South Branch, commonly called 'Wappecomo' is the main and principal source of that river," and expressed a hope, "that Fairfax would concur with him in causing such an examination of the two branches as will put the question to rest." M'Mahon's History of Maryland, page 52, 53. Council Proceedings of Maryland, Liber T. R. and W. S., 12, 13. The historian also refers to Jefferson's Notes on Virginia, page 193, 194. "From this period until the revolution, the existing records of the council and assembly transactions are entirely silent as to this contest, of which an accurate history can be collected only from the records of the English council. Fairfax continued to adhere to the line run from the stone planted by himself and Virginia; and the Proprietary of Maryland continued to assert his claim to the first fountain, be that where it might." M'Mahon's History of Maryland.

It is quite clear to your committee, if the American Revolution had not intervened, a collision must have ensued between the grants of Fairfax and Baltimore, which would have brought about an amicable adjustment of boundaries, or forced a determination before the King in Council. That glorious event in American history, took away this dispute from Fairfax and Baltimore, and vested it in the independent States of Virginia and Maryland: and the former in the very act of forming her Constitution, made an express recognition of all the rights of the latter within the limits of her original charter, and left nothing to be done but an ascertainment of these limits by actual examination and survey. But your committee are constrained to remark, that the virtuous precept which is found in the Constitution of Virginia, has never been followed up by the same frankness and generosity in ascertaining and yielding to us our limits. While Maryland has asked for nothing but a clear ascertainment of her limits as recognized and acknowledged by Virginia, upon terms suitable to the honour and dignity of both States, she has been asked by Virginia to permit the latter to fix beforehand the place of beginning. This is stated with pain and reluctance—but it is a truc that ought not to be concealed. The people of Virginia and the world, should know the wrong done us by our sister state, who acted so just when the revolution was in embryo. Soon after the revolution, it
1025 became the duty of this State, with as little delay as possible, to dispose of the reserved lands westward of Fort Cumberland, to fulfil engagements made to the officers and soldiers of the Maryland line, which had been in the service of the United States during the war; and an act of the legislature of Maryland was therefore passed at November session, seventeen hundred and eighty-eight, to sanction the proceedings of commissioners previously appointed to

locate certain lots of land westward of Fort Cumberland for the benefit of these officers and soldiers. So urgent were the claims of these military servants who had lately gone through the heat and burthen of the day of the revolution, that this State could not, without evident injustice, postpone the location of their lands until the settlement of our southern and western limits. By the act of seventeen hundred eighty-eight, chapter forty-four, section 15, it is provided, as a protest, your committee presume, "that the line to which the said Francis Deakins has laid out the said lots, is in the opinion of the general assembly, far within that which this State may rightfully claim as its western boundary; and that, at a time of more leisure, the consideration of the legislature ought to be drawn to the western boundaries of this State, as objects of very great importance."

By this reservation, this State cautiously precluded all idea of abandonment of our claim, or of yielding at any time to the unjust pretentions on the part of Virginia; and embracing the first moment of leisure in the year seventeen hundred and ninety-five, opened again a door for negotiation. In that year by a resolution of the general assembly, three distinguished gentlemen, Messrs. Pinkney, Cooke and Key, were appointed commissioners on the part of this State, to meet such persons as the State of Virginia should appoint to adjust and settle by compact the southern and western limits of this State, and to fix the dividing lines and boundaries, and to settle upon just terms the claim of either State within the limits of the other. Mr. Pinkney being called away on a foreign mission, and Mr. Cooke having refused to act, in seventeen hundred ninety-six, Charles Carroll of Carrollton, and J. T. Chase, Esquires, were appointed in their stead. Mr. Key soon afterwards removed from the State, and Messrs. Carroll and Chase refused to accept; and
1026 thus the State had no commissioners until eighteen hundred and one. In that year, by a resolution of the General Assembly, the power to appoint commissioners was given to the governor and council. The governor and council, under the authority given them, appointed Messrs. Duvall, McDowell and Nelson, commissioners; and a correspondence took place between Governor Mercer of Maryland, and Governor Monroe of Virginia. But neither the first letter of Governor Mercer nor the reply of Governor Monroe, can be found. There is, however, a letter from Governor Mercer, dated June 5th 1802, to the governor of Virginia, in which there is an acknowledgment of the receipt of a letter from the governor of Virginia upon the subject of our southern and western limits, which shows that there was a correspondence under the resolution of eighteen hundred and one. By the letter from Governor Mercer of June 5th, 1802, it appears that Governor Monroe had expressed surprise at being informed of the pretensions of Maryland, and he is referred for the information of himself and the legislature of Virginia, to the resolutions of seventeen hundred and ninety-five, and to a letter of Governor Stone which was written immediately after the passage of these resolutions, as well as to the letter of Governor Brooke of Virginia in reply to him. From Governor Mercer's letter, it appears that the legislature of Virginia passed an act to appoint commission-

ers to meet those appointed by Maryland, but limiting their proceedings to a settlement of the western line. In this correspondence, Governor Mercer informs Governor Monroe that no measures could be adopted to ascertain the western boundary between the States, until it should be first determined "whether the North or South Branch is the main branch of the Potomac river." Maryland had proposed the final adjustment of our southern and western limits, which were evidently unsettled, but Virginia offers to settle the western line alone. She evaded, as she has endeavoured to do ever since, the true question and place of the first fountain, the only matter in dispute; while Maryland, bold and confident in the merits and justice of her claim, went upon the common call in her charter. But it is plain upon principles of justice and right, that Virginia could gain no advantage, even by an attempt to settle the western line first, unless she demands of us to abandon our charter. By the

1027 charter, the western line was to be known by passing from the said bay, called Delaware Bay, in a right line by the fortieth degree of north latitude, from the equinoctial, until the true meridian of the first fountain of the river of Potomac. What that first fountain is, as intended by our charter, Virginia very well knows, but was not willing to ascertain. The charter goes further and says, after striking the first fountain, "thence verging towards the south unto the further bank of the said river, and following the same on the west and south" &c. Now it is evident if the western limit of this State is at any time honestly settled, it must of course settle our southern boundary, unless indeed Virginia should be permitted to settle our rights as fixed and ascertained by our charter. The proceedings of the executive of this State under the resolutions of eighteen hundred and one, are particularly referred to in the message of Governor Mercer, of November 6th, 1802. At December session eighteen hundred and three Governor Mercer being a member of the House of Delegates, was chairman of a committee appointed to consider and report upon the matters growing out of the resolutions of eighteen hundred and one. In this report Governor Mercer recommends the running of a provisional line by agreement with Virginia, until further steps could be taken, to ascertain the southern boundary. "This report was not acted upon; and the subject does not appear to have been revived until eighteen hundred and ten, when another resolution was passed similar to that of eighteen hundred and one. From eighteen hundred and ten, the matter slept until it was revived by this State in the act of eighteen hundred and eighteen, chapter two hundred and six. "This State had now become wearied with her efforts to reclaim the territory south of the north branch; and hence this act of eighteen hundred and eighteen, in proposing to Virginia the appointment of commissioners, agrees to adopt the most western source of the North Branch, as the point from which the western boundary shall start. At December session eighteen hundred and twenty-one of the assembly of Virginia, an act was passed, which purported to meet and reciprocate this proposition of the State of Maryland; but, was, in fact materially variant from it. By the

Virginia act the commissioners were instructed to commence
1028 the western boundary at a stone planted by Lord Fairfax, on the head waters of the Potomac; and thus they were tied down to the old adjustment between Fairfax and the Crown. The Virginia act therefore was entirely different from that of Maryland, which directed the commissioners to begin at the most western source of the North Branch, and did not justify the appointment of commissioners on the part of Maryland. Our act of eighteen hundred and eighteen, expressly directed, that the appointment on the part of this State should be made only after Virginia had embraced its propositions, by the passage of a similar act. But this was overlooked by the executive of Maryland; and commissioners were appointed on the part of both States who assembled on the head-waters of Potomac in the summer of eighteen hundred and twenty-four. M'Mahon's H. of Md. But the instructions of the Virginia commissioners being confined to the Fairfax stone, put an end to all further negotiations. By an act of eighteen hundred and eighteen, the executive of this State had no authority to appoint commissioners until a similar act was passed by Virginia; and as no similar act ever did pass by the latter, the appointment of commissioners by the executive of this State, was premature and unauthorized, although done from patriotic motives. This State therefore is in no way committed or obliged to be confined to the most western source of the North Branch; because it being an offer of compromise, and refused by Virginia, Maryland is remitted to her original rights. As, however, the proceedings of this State, under the act of eighteen hundred and eighteen, were intended on our part to settle in an amicable way our southern and western limits, the committee respectfully, refer to the correspondence between the commissioners appointed by both states. At the moment of their assemblage the Virginia commissioners opened their instructions which confined the beginning at the Fairfax stone, which was repelled with becoming energy and decision on the part of our commissioners.

In another part of this report, the committee have fully shewn, that the Fairfax stone, was planted by two interested parties, Virginia and Lord Fairfax, without the knowledge or consent of either of the Baltimores, and by a proceeding to which neither of them
was a party. That Virginia in her constitution made an
1029 express recognition of our rights within the limits of our charter, without confining us to the Fairfax stone, but evidently intending an ascertainment of these limits according to the true intent and meaning of our charter. It has therefore surprised your committee, that the State of Virginia, so enlightened, just and generous on most other subjects, in this matter of the adjustment of our boundaries, should refuse to meet us upon terms of justice and right, and consistent with the dignity of both States. The offer of our act of eighteen hundred and eighteen, having failed as stated, this State, at December session eighteen hundred and twenty-five, passed sundry resolutions, on the same subject, by which the governor and council were authorized and requested to appoint three commissioners on the part of this State, to meet such commissioners

as might be appointed by Virginia, to settle and adjust by mutual compact between the two governments, the dividing and boundary lines between them. And it was provided in one of the resolutions in case of disagreement, between the commissioners appointed by both States, that the executive of this State, should request the governor of Delaware to appoint an umpire.

In the month of April next, after the adoption of these resolutions, Governor Kent, transmitted them to Governor Tyler; and in the month of May following, Governor Tyler sent his reply to Governor Kent. It will be found that Governor Kent remin-ed the governor of Virginia of the anxious desire of this State so often manifested on that subject; Governor Tyler, in his reply, admitted the importance of the matter, and the unsettled condition of the boundaries—but thought it was owing to defectiveness of powers with which the commissioners on both sides were entrusted.

This correspondence was communicated to both branches of the legislature by Governor Kent, at December session eighteen hundred and twenty-six; since which nothing has been done as far as your committee have been able to ascertain. By a petition from some of the citizens of Alleghany county in this State, presented to the general assembly, it appears that the authorities of an adjoining county in Virginia, have assumed jurisdiction over them; and they are now called upon to do duty as citizens and pay taxes in Preston county, Virginia. Notwithstanding the opinion of your committee that in a strict legal adversary proceeding against Virginia,
1030 the common call of the first fountain ought as originally intended, to start a meridian for the western boundary at the most western source of the South Branch, (and verging towards the south unto the further bank of said river, and following the same for the southern limits on the west and south,) they nevertheless recommend that the whole matter should be left open, for the most friendly and amicable adjustment.

Your committee recommend to the consideration of the general assembly, several resolutions.

Resolved by the General Assembly of Maryland, That the governor and council of this state be, and they are hereby authorized and requested, to appoint three commissioners on the part of this State, to meet such commissioners as may be appointed on the part of the commonwealth of Virginia, to settle and adjust by mutual compact, between the two governments, the southern and western limits of this state, and the dividing and boundary lines between this state and the commonwealth of Virginia, and also to settle and adjust as aforesaid, any claim of this state, or of the commonwealth of Virginia, to territory within the limits of either state.

Resolved by the General Assembly of Maryland, In case of disagreement between the commissioners appointed on the part of this state, and on the part of the commonwealth of Virginia, the executive of this state, and of the commonwealth of Virginia, shall request the governor of Delaware, for the time being, to appoint an umpire, who shall be vested with full power to settle the several matters in

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controversy between this state and the commonwealth of Virginia, hereby confided to the aforesaid commissioners.

Resolved by the General Assembly of Maryland, That the compact or agreement when entered into by the aforesaid commissioners, or in case of disagreement and appointment of an umpire, as hereinbefore provided, the award of said umpire shall be final and conclusive on this state, and the faith of this state, is hereby pledged to make such legislative enactments as may be necessary to secure all rights derived from the state of Virginia, to lands lying within any part of the territory now in dispute between the two states, which shall be adjudged to belong to this state; *Provided, however*, and it is hereby further

Resolved by the General Assembly of Maryland, That
1031 nothing herein contained shall have any effect unless the legislature of Virginia shall first provide for the appointment of commissioners on the part of Virginia, to treat with commissioners proposed to be appointed on the part of this state, and for the appointment of an umpire by the Governor of Delaware in case of disagreement as aforesaid, and shall also pledge the faith of the said state, that said compact or agreement, or umpirage, as the case may be, shall be conclusive on the said state of Virginia; and also that all rights demanded under this state, to lands lying within any of the disputed territory which shall be adjudged to belong to Virginia, shall be respected, ratified and confirmed.

Resolved by the General Assembly of Maryland, That said commissioners and the said umpire, shall, from time to time, make reports of all proceedings had under and by virtue of these resolutions, to the executive of this state, and to that of Virginia.

Resolved by the General Assembly of Maryland, That the governor of this state, be requested to transmit a copy of this report and resolutions, to his excellency the governor of Virginia, to be laid before the legislature of the said commonwealth.

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Exhibit G.

Report of Committee of Maryland Historical Society.

The original boundaries of the Province of Maryland were laid down with unwonted precision in the charter which created it. These were; the fortieth parallel of north latitude; a meridian line running south to the first or most distant fountain of the Potomac—("ad verum meridianum primi fontis fluminis de Patowomack") thence proceeding southward ("deinde vergendo versus meridiem") to the fa-ther or western bank of that river, and following that bank to a specified point at the mouth of the river where it debouches into the Chesapeake; thence by a straight line across the bay to Watkins Point and onward to the ocean, and thence by the ocean and Delaware Bay and river to the fortieth parallel.

The only one of these courses that was at all uncertain at the time the charter was granted was that at the extreme west. The country

to the west of the Alleghanies was then altogether unknown. Indeed, for many years the geography of the continent was so little understood, that Herman, in his map (1670), considers the mountains about Cumberland to be the central ridge between the two oceans. The point at which the meridian line was to begin had, therefore, to remain undetermined until it should be found which was the furthest source or first fountain of the Potomac; in other words, which of the branches of that river took its rise farthest from its mouth. This point settled, the spring-head or source of that branch determined the western boundary of Maryland.

In 1649, Charles II, then a fugitive in Holland, granted to Lord Hopton, Sir Thomas Culpepper, and other exiled royalists, a tract of land in Virginia, lying between the rivers Rappahannock and Potomac, and running down to the Chesapeake Bay. Under the commonwealth, this remained, of course, a mere grant on paper; but after the restoration the grantees or rather their heirs and assigns, proposed to avail themselves of their rights. Certain questions having been raised as to the validity of the original grant, these claimants surrendered their patent, and in 1669, received a re-grant, under the privy seal, of the lands in question. This grant, however,
1033 conveyed only a title to the soil, which still remained a part of Virginia, and subject to her jurisdiction. It was not an enlargement of the territory of Virginia, but a grant within Virginia, and necessarily limited by the boundaries of that colony.

The Virginians were violently opposed to this grant, which placed the ownership of a vast extent of territory within two or three hands; and in 1675, they sent agents to England to remonstrate against it, or, if remonstrance were unavailing, to buy out the grantees' claims; but without success in either case.

By the year 1688 the whole title had vested in Thomas, Lord Culpepper; and James II granted him a new patent for the whole tract. This descended to Catharine, his daughter and heiress, who brought it in marriage to Thomas, fifth baron Fairfax of Cameron, in the Scottish peerage. Lord Fairfax proposed to reap some advantage from his immense territorial possessions which were still unsurveyed; and in 1733 petitioned the King for the determination of his boundaries by commissioners. The petition was granted, and six commissioners were appointed, three representing Virginia and three the Crown, who determined the boundaries separating his grant from the rest of Virginia. The grants had all called for lands lying south of the Potomac river; and consequently there was nothing in them interfering with the rights of Maryland. For this reason, probably, Charles, Lord Baltimore, made no attempt to have Maryland represented on the commission. But when the question arose, which was the Potomac river, of which of the two great branches which unite to form it was the longer, the commissioners (in 1736) concluded that the North Branch was the longer; Maryland, whose territory was at stake, having no voice in the matter.

In 1745, Thomas, sixth Baron Fairfax, came to America; and on October 17, in the following year, surveyors engaged to run the line in conformity with the report of the commissioners, planted "the

Fairfax Stone," to mark the northwestern limit of his grant. In 1748 the Virginia Assembly approved the line run by the commissioners, it was confirmed by the King in Council, and Fairfax opened an office for the sale of lands.

News of these proceedings reached Frederick, Lord Balti-
1034 more, and in his first letter of instructions (1753) to his new governor, Horatio Sharpe, he protests against this invasion of his territory, and directs the Governor to look into the matter, and to open correspondence with Lord Fairfax with a view to a settlement of the boundaries between them. When these instructions were laid before the Maryland Council, they proceeded to inform themselves about the lands in question and the length of the rivers. They called before them Col. Thomas Cresap, a settler in the extreme west of the province, who knew the country well; and he assured them that the South was the longer branch, running, as he believed, about sixty miles northwest farther than the North Branch.

Sharpe also wrote to Fairfax, calling his attention to the fact that the South Branch, according to the best information, was the true source of the Potomac, and proposing that they should unite in determining the correct boundary. Fairfax replied that he was of opinion that it would be to his advantage to have the South rather than the North Branch as his boundary; but that he thought the two governors were the proper persons to settle the question. He apparently believed that what he could gain by the extension of his territory to the west would more than offset what he should lose between the two branches. Colonel Cresap, in the next year, made a survey of both branches, and sent Governor Sharpe a map of his drawing, in which their position and the length are pretty accurately laid down.

Sharpe, it is evident, was prepared to take all necessary steps for asserting and securing the rights of Maryland; but the outbreak of the French and Indian war in the next year (1754) prevented further action.

We find him writing to the Proprietary in 1756, that "no survey can be safely made within eighty miles of the South Branch by less than a body of 100 or 200 men.

In 1762 Colonel Cresap wrote in person to the Proprietary confirming his previous statements and adding particulars.

The treaty of Paris, in 1763, which closed the war, gave an opportunity for a final settlement of the question; but the King, finding it necessary to adjust the boundaries of his colonial possessions, and to carry out his agreement with the Indians, issued a procla-
1035 mation prohibiting the colonial governments from granting any lands lying west of the heads of the rivers flowing into the Atlantic from the west and northwest. About the same time the Proprietary conceived the idea of reserving for himself a manor of 10,000 acres in the western part of the Province, and sent out orders that no lands beyond Cumberland were to be granted to settlers until this manor was laid off. These causes combined to prevent settlements in the extreme west of Maryland, which otherwise would have led to a final settlement of the boundary. Governor Eden, however, in 1771 appointed commissioners, of whom Cresap was one, to survey

and mark the head of the South Branch. He did so; marked the spot with a stone bearing the letters CLDB, and continued the line northward. On completing his labors, he filed a very accurate map in the Land Office.

In May, 1774, Mr. Jenifer, the Proprietary's agent, remonstrated against the action of the Board of Revenue, who were opening to settlers the lands of the "Western Reserve," as it was called, telling the Board that while there was no doubt that the South Branch was the true boundary of the Province, yet that it was inexpedient to grant lands in the territory claimed by Fairfax while the Proprietary was waiting an opportunity to bring the whole matter before the King. The Board reply that it is not for them to take any action which may tend to prejudice the Proprietary's claims or imply any doubt as to their validity. "The Proprietary," they say, "has lately been at the expense of running a line to the South Branch; and if the Virginians hear that he doubts about the extension of these limits, it will be an encouragement to them to begin to throw stones." Holding this view, they continued to grant lands in the Western Reserve until October, 1774, when instructions were received from the guardians of the new proprietary, Henry Harford (a minor), to suspend all further grants of the reserved lands.

Thus the question stood at the outbreak of the Revolution. Fairfax still held the northern neck under the royal government of Virginia; and when that colony assumed the position of a sovereign State, he held it under the State Government. In 1785, on account of the alienage of Denny Fairfax, devisee of Lord Fairfax, the Virginia Assembly claimed the land as a forfeit; but this claim
1036 was not upheld by the Supreme Court of the United States.

At the outbreak of the Revolution, then, the question was still unsettled. Maryland claimed her western boundary under her charter, which had never been revoked or broken; and this claim had never been yielded, waived or compromised. This claim, from the first, was to the farthest source of the Potomac, whichever that might be found to be; and undisputed surveys has shown that the South Branch took its rise from the farthest source, and was therefore the true boundary of Maryland.

Virginia recognized the equity of Maryland's position, and in her first constitution, adopted June 29, 1776, inserted an article confirming to the State of Maryland, in the fullest and most explicit manner, all that the latter claimed. The words are:

"The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Potomac and Pokomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon."

Though this was full and complete enough, yet the phraseology

"Ceded" and "released" implied an assertion of rights which Maryland had never admitted. The first Constitutional Convention of Maryland (October, 1776) was by no means disposed to allow the State to be represented as the recipient of Virginia's bounty; and in order that her position and claims might be perfectly clear, this article of the Virginia constitution was taken into consideration, and the following resolution adopted:

Resolved, unanimously, that it is the opinion of this Convention that the State of Virginia hath not any right or title to any of the territory, bays, rivers, or waters included in the charter granted by his majesty, Charles I, to Cecilius Calvert, Baron of Baltimore."

After this disclaimer on the part of Virginia and assertion of rights by Maryland, a compact was made between the two States, Messrs. Jenifer, Stone, and Chase being the commissioners on the part of Maryland, and Mason and Henderson on the part of Virginia, providing for riparian rights on the Potomac, trespasses, the return of fugitives from justice, etc. This compact was ratified by the legislatures of both States in the same year, and re-enacted in the Virginia codes of 1849 and 1860.

1037 So careful was Maryland, on the one hand, not to seem to waive any of her rights, and, on the other, not to appear discourteous to Virginia, who appeared so equitably disposed to her, that when, in 1788, it became necessary to allot portions of the Western Reserve as bounty-lands to soldiers of the Revolution, care was taken to set out the 2,575 allotments in territory north of the North Branch of the Potomac, and running next to "the present supposed boundary of Maryland." Under a resolution of the Assembly of the previous year, Francis Deakins had been employed to survey and plot the lands, lying west of Fort Cumberland, and by his plot the bounty-lands were laid out. But to avoid all misconstructions, in the same act the Assembly declared:

"That the line to which the said Francis Deakins has laid out the said lots is, in the opinion of the General Assembly, far within that which this State may rightfully claim as its western boundary; and that at a time of more leisure the consideration of the legislature ought to be drawn to the western boundaries of this State, as objects of very great importance."

As the Charter of Maryland was clear in the definition of the boundary, and as the Constitution of Virginia had pledged that State to acceptance of the line laid down in the Charter, nothing now remained to be done but to survey and mark the line. In 1795, by a resolution of the Assembly, Messrs. Pinkney, Cooke and Key were appointed commissioners on the part of Maryland to meet a commission from Virginia, and adjust the southern and western boundaries of the State. Mr. Pinkney, however, was sent on a foreign mission, and Mr. Cooke declined to act, as did also Messrs. Carroll and Chase, who were appointed in their places. Mr. Key soon afterwards removed from the State.

In 1801 the Assembly, by a resolution, empowered the Governor and Council to appoint commissioners for the same purpose, and Messrs. Duvall, McDowell and Nelson, were appointed on the part

of Maryland. Part of the correspondence between Governors Mercer and Monroe has been preserved, from which it appears that the Virginia legislature appointed commissioners, but limited their powers to a settlement of the western line.

In this correspondence Governor Mercer points out that the first step to be taken is to determine on which of the branches the first fountain of the Potomac is to be found. This point once settled, there could be no possibility of dispute as to the western
1038 boundary, which was a due north line from that point; nor as to the south-western boundary, which followed the right bank of the river. This disagreement seems to have prevented further proceedings; and though, in 1803, Governor Mercer, then in the Maryland House of Delegates, recommended running a provisional line until further steps could be taken, nothing came of it. A resolution of similar tenor was passed in 1810, but without results.

By the year 1818, Maryland seems to have grown weary of attempts to recover her invaded territory, and the Assembly passed an Act authorizing the appointment of three commissioners to meet commissioners from Virginia, and run a line from "the most western source of the North Branch of the Potomac," due north to the Pennsylvania line. For seeing that even this line would inclose lands granted by Virginia, the act provided for the regranting such lands free of charge. This act, however, was not to be operative until the Virginia legislature should have passed an act with similar provisions. Virginia did not act in the matter until 1821, when her legislature passed an act indeed, but one differing materially from the Maryland act. The Maryland act provided for the ascertainment of "the most western source of the North Branch of the Potomac," as the beginning of the line; the Virginia act provided for the beginning of the line at the Fairfax stone, which had never been recognized by Maryland, and, in fact, does not mark the farthest source of even the North Branch.

Commissioners were, however, appointed by both States; but on their meeting, in 1824, the Virginians produced their instructions, which, in themselves, were of a character to bar all further proceedings.

The Maryland act, as has been said, instructed her commissioners to ascertain the most western source of the North Branch, and begin the line there; while the Virginia commissioners were instructed to proceed to the Fairfax stone and begin the line there.

In other words, the compromise (if we can call so one-sided an offer a compromise) which Maryland, much to her own injury, had offered, was not enough unless she would concede all that Virginia now chose to claim. The Maryland commissioners were not willing, nor had they the power, to make this concession; while on
1039 the other hand the Virginians refused, or were not authorized, even to investigate the pretensions of the Fairfax stone to mark the farthest source of the North Branch. The line must begin where Virginia wanted it to begin, or not at all. So all negotiation came to nothing, and the act of 1818 was repealed in 1825.

Maryland's offer of a compromise having been thus rejected, she was remitted to her original rights.

In 1826 resolutions were again passed by the Maryland Assembly providing for the appointment of commissioners to meet commissioners from Virginia and settle the boundary. In case of disagreement, the Governor of Delaware was to be requested to appoint an umpire. This resolution was not to go into effect until the Virginia Assembly should have provided for a similar commission, and should have pledged the faith of the State to abide by its award. A correspondence between Governors Kent and Tyler followed, but nothing came of it.

In 1832 the Maryland Assembly (probably stimulated by the very able discussion of the question by McMahon in his *History of Maryland*, published in the preceding year) appointed a committee to inquire and report.

1. What were the true charter boundaries of the State.
2. Whether the southern and western boundaries as laid down in the charter ought not to be taken as the true boundaries.
3. What is the first fountain of the Potomac as called for by the charter.
4. Whether Virginia had at any time recognized the claim of Maryland to all the land included in the charter.
5. Whether any survey could be found determining the first fountain of the Potomac.
6. The nature of the boundary dispute, the steps that had already been taken therein, and what further action, in their judgment, should be taken by the State to have the matter finally adjusted.

The committee reported at length. In answer to the first question, they recite and explain the language of the charter. To the second they say that the southern and western bounds as laid down in the charter should be the present boundaries of Maryland, that
1040 State having done nothing to divest herself of her rights. They add that the territory claimed is estimated to amount to 462,480 acres. To the third, that the first fountain of the Potomac can easily be determined by survey. To the fourth, they cite the declaration of Virginia Convention of 1776, and the resolution in the Maryland Convention. To the fifth, they cite Cresap's survey of 1771, on file in the Land Office. In answer to the sixth, the committee review the whole controversy in its various stages. They conclude by recommending a commission similar to that provided for by the resolution of 1826, "to settle and adjust by mutual compact between the two governments the southern and western limits of this State, and the dividing and boundary lines between this State and the Commonwealth of Virginia."

As before, the Governor of Delaware was to be requested to appoint an umpire; and the action of the Assembly was to have no effect until Virginia had provided for a similar commission, and pledged the faith of the State (as Maryland did), to abide by its award.

In 1833 the Assembly of Virginia took action in the matter, but it was action of a peculiar kind. No notice was taken of Maryland's

overtures nor of her previous attempts to bring about a settlement; the act is worded as if it were a spontaneous and independent movement on Virginia's part. It provides for the appointment of three commissioners on the part of Virginia "to meet such commissioners as may be appointed for the same purpose by the Commonwealth of Maryland, to settle and adjust * * * the western limits of this State, and the dividing and boundary line between this State and the Commonwealth of Maryland, to commence at the Fairfax Stone, or at the first fountain of the Cohongoroota, or North Branch of the Potomac."

Of course, this action, besides being in a high degree discourteous to Maryland, was altogether different from the Maryland resolutions. The latter provided for a settlement by mutual compact, the commissioners to investigate and determine where the true boundary lay; the Virginia act, while preserving the phrase "mutual compact," dictates the place at which the line is to begin and empowers its commissioners only to meet commissioners from Maryland
1041 appointed "for the same purpose," that it, to begin the line at the Fairfax Stone, or the head of the Cohongoroota.

It is evident that no commissioners appointed under the Maryland resolutions would have power to make this concession; and, in fact, the resolutions themselves could not go into effect.

Moreover, no provision was made for umpirage in case of disagreement, nor was the faith of the State pledged to abide by the award. It was, in fact, a rejection—and a rude rejection—of Maryland's friendly overtures. Indeed the Virginia Assembly evidently anticipated such an interpretation, and provided that in case Maryland appointed no commissioners, the line should be run by Virginia alone, in the way she wanted it.

This rebuff exhausted Maryland's patience. On March 14, 1834, the Assembly passed a temperately worded resolution expressing regret at the rejection of their advances, and instructing the attorney-general of the State to institute proceedings in the Supreme Court of the United States to procure a final adjustment of the southern and western boundaries; but providing that such suit should cease at any time, before final judgment, if Virginia would accept the overtures of 1832.

It seemed now at last that the question must be definitely settled, either by mutual agreement or by judicial decision. But the resources of Virginia were not yet exhausted. Governor Tazewell, of the State, in his message of 1834, adverted to the matter, saying that Maryland had misunderstood the Virginia Act of 1833; that it was really intended as an acceptance, and not a rejection of the Maryland overtures; but that Maryland having thought fit to assume a menacing attitude, it did not now comport with the dignity of Virginia to go into explanations. This message was not officially communicated to the Maryland legislature, but reached them through the public press.

This adroit move was perfectly successful. The matter having been referred to by Governor Thomas in his message, the special

committee to whom the subject was referred, report that they see nothing in the matter now brought before them which calls for "any relaxation or change in the course deliberately determined upon at the last session," and they wish it clearly understood that Maryland "seeks or desires nothing which is not hers of right; and it is necessary for her honor that in a controversy, however amicable,
1042 the terms of adjustment shall not be dictated to her." The committee then refer to the Virginia act of 1833, which they declared "not only not in accordance with, but directly repulsive of," the Maryland overtures, and "an undertaking, in truth, by one of the parties absolutely to settle and pronounce against the claim of the other."

But they add, that since they have learned from Governor Tazewell's message that Virginia is willing to agree to terms of adjustment, "if the door of explanation be not closed upon her," they will not, for their part, let "any strained *punctilio*" stand in the way of an amicable settlement; and they will, repeal the resolution of March 14, 1834, direct- the attorney-general to discontinue proceedings under it, and now stand ready and desirous to settle the long-pending controversy by amicable negotiation.

They were left standing in this amicable attitude. Virginia made no further move.

The provisiona- line of 1787, or "Deakins Line," as it was called, had long done duty as a boundary; and as the State granted no lands beyond it, it came to be looked upon—despite the emphatic protest of the Assembly of 1788, as the true boundary line of the State. In process of time the marks became obliterated, and conflicts of title and litigation arose between the holders of Maryland and the holders of Virginia patents for lands in the debatable territory. So in May, 1852, the Maryland Legislature passed an act reciting these facts and requesting the Governor to open a correspondence with the Governor of Virginia about the matter; and authorizing him to appoint a commissioner, if the Legislature of Virginia would also appoint one, which joint commission should run and mark a line due north from the Fairfax stone, which line, when ratified by both Legislatures, should be the boundary between the States.

As this was an offer to give up the whole matter in controversy, it looked as if the contention was about to be settled at last. Virginia responded by an act of similar tenor in the following year. This, however, was superseded by an act passed in 1857-8 of somewhat different scope. This provided for a joint commission to trace the southern boundary from Smith's point to the Atlantic Ocean, and the western boundary from the Fairfax stone to the Pennsylvania line.

1043 As the Maryland act of 1852 only empowered the settlement of the western boundary, Mr. T. J. Lee, the commissioner appointed under it, met Col. Angus W. McDonald, on the part of Virginia, to carry out his instructions. By application to the Federal government the services of an experienced engineer, Lieutenant N. Michler, were secured, and a line from the Fairfax stone north to the Pennsylvania line was run and marked. This

line, when ratified by both Legislatures, was to be the definite boundary.

Maryland proceeded to ratify Michler's line by an act passed March 6, 1860, Virginia, however, did not proceed to ratification. In the session of 1859-60 the Virginia Assembly passed two resolutions dealing with the subject. In the first they provided for the erection of suitable monuments to mark Michler's line; and in the second they authorized the governor to send an agent to England to collect record and documentary evidence "tending to ascertain and establish the true lines of boundary between Virginia and the States of North Carolina, Tennessee and Maryland."

From this it would appear that they considered the boundary question still open. At all events, the ratification required by the act was not given, and Maryland was once more remitted to her original rights, her charter boundary and its acceptance by the Virginia Constitutional Convention.

The outbreak of the war in 1861, and its results, changed the status of the question. The State of West Virginia was separated from Virginia, and in her boundaries (which were designated by county lines) were included those counties in which the disputed territory lies. It was with West Virginia, therefore, that the question would have to be settled.

The Legislature of West Virginia, at the session of 1868, authorized the Governor to appoint a commission to ascertain the line between West Virginia and Maryland, commencing at the Fairfax stone, and running north to the Pennsylvania line, and to communicate with the Governor of Maryland, with the view of having a joint survey made. The reason of this action was the fact that Michler's line having been found more favorable to Maryland than the old provisional, or Deakins' line, West Virginia took the
1044 ground that as Virginia had never ratified Michler's line, West Virginia was bound to nothing, and the question was still open.

In 1884 the Maryland Assembly passed a resolution by which, after the statement that there was difficulty in ascertaining the exact location of Mason and Dixon's line, owing to the absence of marks, the members of Congress from Maryland are requested to use their influence to obtain an appropriation from the Federal government "for the purpose of re-surveying and locating the said Mason and Dixon's line by marking said Mason and Dixon's line with suitable stone monuments, with the letters M. and V. between the States of Maryland and Virginia, M. and P. between the States of Maryland and Pennsylvania, M. and D. between Maryland and Delaware, commencing at the Fairfax stone at the head waters of the North Branch of the Potomac, thence running northwardly with Mason and Dixon's line until it intersects the eastwardly line dividing the States of Pennsylvania and Maryland"—and so forth.

As the action contemplated by this resolution was, on the face of it, impracti-ble, your committee have not thought it necessary to investigate what further steps, if any, were taken in the matter.

In 1886 a resolution was passed in the Maryland Assembly to

the effect that as Michler's line had not yet been adopted by West Virginia, the Governor of Maryland should be requested to bring the subject to the attention of the Governor of West Virginia, asking him to bring it before the Legislature of that State for such action as they might deem fitting. In the next year the Assembly of West Virginia passed an act confirming Michler's line, but not unconditionally. The act was not to take effect until Maryland should have passed an act or acts conforming all Virginia patents to "lands situate * * * between the new Maryland line hereby established, and the old Maryland line heretofore claimed by Virginia and West Virginia to the same extent and like legal effect as though the said old Maryland line were hereby confirmed and established."

This clause introduces a new and important feature in the case. Michler's line differs considerable from the old line, running from the Fairfax stone more to the westward, and giving to Maryland, as your committee are informed, a wedge of territory three-
1045 quarters of a mile at the base, and thirty-seven miles long. All the lands within this wedge, your committee are informed, are covered by grants from Virginia and a considerable part of them by grants from Maryland. Maryland is therefore called upon to annul her own grants and oust her own citizens from her own acknowledged territory as a condition of getting back a small fraction of the lands of which she has been despoiled.

In 1888 the question again arose in the Assembly of Maryland. On March 13, a resolution was passed in the Senate to the effect that whereas, while Maryland had ratified the Michler line of 1859, Virginia had never done so; and whereas Maryland had endeavored, without avail, to induce West Virginia to adopt it, or to settle the matter by a joint commission, that State had not complied,—that now the Attorney-General of the State be applied to, to advise the proper remedy.

The Attorney-General replied (March 17) saying:

"In my judgment, no definite settlement of that matter can be accomplished by the appointment of commissioners, or by negotiations between the Legislatures of the respective States. The controversy has been going on for more than a century, and the State of Maryland has appointed commission after commission to make such adjustment, but all to no purpose." * * *

"In my judgment, therefore, there are but two courses open to bring this long-pending controversy to an end. One is for the State to cause proceedings to be taken against the State of West Virginia in the Supreme Court of the United States for the purpose of procuring a final legal adjustment and settlement of the boundary line between the States; and the other is to submit the matter in controversy to arbitrators appointed by the States."

He concluded by recommending the passage of an act providing for an arbitration, and submitted the draft of such an act.

The bill was introduced in the Senate on March 19, and referred to the Committee on Federal Relations.

We may infer that upon mature consideration it was judged in-

expedient to entrust a decision of so much moment to the State to the judgment of a single man (since this is what an arbitration usually comes to), and when the bill providing for arbitration was reported back to the Senate, it was reconsidered, and the enacting clause stricken out.

Thus stands the question at the present moment. Nothing final has been done since the Virginia Convention of 1776, which acknowledged the right of Maryland to her charter boundary, and waived all claims that Virginia might have made to any ter-
1046 ritory within it, incorporating these words, for the greater solemnity, in the Constitution of the State.

In conclusion, your committee beg to offer the following Resolutions:

Resolved, That, in the opinion of this Society, it is highly desirable that the true western boundary of Maryland, which had been so long in dispute, should be equitably and finally determined; and this Society approves the view of the late John V. L. McMahon, that the best mode of settlement is by a decision of the Supreme Court of the United States.

Resolved, That a copy or copies of this report be transmitted to the members of the Hon. Legislature of Maryland at their next session.

All of which is respectfully submitted,

WM. HAND BROWNE,
ALBERT RITCHIE.
Committee.

Endorsed on cover: Exhibit "A" to "G," both inclusive, filed with the Answer of the State of Maryland, to the Cross-bill of the State of West Virginia in this cause. Exhibit Brown No. 7. Supreme Court U. S., No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1047 EXHIBIT BROWN No. 8.

The Western Boundary Survey of Maryland.

A Final Report of the Astronomical and Magnetic Work done in 1897.

With 9 Plates.

By L. A. Bauer, Astronomer and Magnetician.

1048 *The Western Boundary Survey of Maryland.*

A Final Report* of the Astronomical and Magnetic Work Done in 1897.

With Nine Plates.**

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Introduction.

In August, 1897, the Maryland Geological Survey was requested by the Attorney General of the State, at that time, the Honorable H. M. Clabaugh, to take charge of the astronomical and magnetic work of the Survey for the determination of the Western Boundary of the State. The State Geologist, Dr. W. B. Clark, detailed me to undertake this important work and instructed me to report to the Superintendent of the Survey, Mr. E. H. Sincell.

My instructions from the Superintendent of the Survey, regarding my duties as astronomer and magnetician to the survey, consisted in the proper execution of the following work:

A. The verification of the Michler Meridian Line, which started at the Fairfax Stone and which was run in 1859-60, in accordance with a joint resolution passed by the legislatures of Maryland and Virginia. This Meridian line will be termed in this report, the "Fairfax Meridian."

B. The determination and tracing of a new Meridian Line starting at the Potomac Stone, planted by the Surveyor-in-charge, Mr. W. McCulloh Brown, in 1897. This stone, according to Mr. Brown, marks the most westerly source of the North Branch of the Potomac. This second meridian line will be called the "Potomac meridian."

C. The determination of the Magnetic Elements at as many points as possible along the line of survey.

1049 These instructions were carried out between August 16th and October 16th, 1897, with the cooperation of the Mary-

* A preliminary report was furnished to Mr. Sincell, at his request, upon Jan. 12-98. Since then I have carefully examined my field notes and have checked the various computations and find that no corrections are necessary.

** Plates 1, 2, 3, 4, 5 and 6, have been furnished by courtesy of the State Geologist.

land Geological Survey and of the U. S. Coast and Geodetic Survey. The State Geologist, Professor William Bullock Clark, courteously permitted me to temporarily discontinue the magnetic work of the State Geological Survey, which he had assigned to me, so that I might be able to give my entire time and attention to the Western Boundary Survey. He furthermore gave me the use of all astronomical and magnetic instruments loaned to the State Geological Survey by the U. S. Coast and Geodetic Survey and likewise assigned Mr. A. C. McLaughlin as geologist to the Boundary Survey party. The Coast and Geodetic Survey readily consented to exchange the small four and a half inch astronomical theodolite loaned to the Geological Survey, and used in the magnetic work, for a larger theodolite, one better adapted to the work of the Boundary Survey. They accordingly put at my disposal one of their new eight inch direction theodolites, which read with the aid of micrometer microscopes to two seconds and by estimation to 1/5 of a second. But for this timely and important assistance rendered by the Maryland Geological Survey and the U. S. Coast and Geodetic Survey, the astronomical and magnetic work of the Western Boundary Survey could not have been executed so well or with such precision. Acknowledgement of this service is made herewith to the State Geologist and to the Superintendent of the Coast and Geodetic Survey.

I also wish to express my appreciation of the encouragement and assistance given throughout the work by the Superintendent of the Boundary Survey, Mr. E. H. Sincell, and by the Surveyor in charge, Mr. W. McCulloh Brown. Mr. Brown evinced most commendable zeal and enthusiasm in the establishment of points on the new Meridian Line between those fixed by me on the distant mountain tops.

He performed his task as faithfully and as accurately as the instruments at his disposal would permit. Every suggestion relating to the proper and accurate performance of the work was readily entertained and warmly seconded by Mr. Sincell.

1050 Mention should also be made of the faithful and devoted service rendered me by my assistants, Messrs. A. S. Abernathy, Charles Ashby and Ralph Ashby.

A word should be added with regard to the conditions under which the work had to be executed, so that an intelligent criticism can be made of it.

Both meridian lines are situated in a region but sparsely inhabited and run through dense forests and thick undergrowth, over high mountains and fog-laden glades. Camps had to be established at suitable intervals and provisions brought by wagon from Oakland over the mountain roads.

As my own camp had generally to be located on mountain tops inaccessible to wagons, instruments, camp equipage and provisions had to be transported by hand. The safe and rapid transportation of the delicate instruments from mountain top to mountain top was always a source of great anxiety, as the slightest mishap would have caused considerable delay. The prevalent atmospheric condi-

tions, the state of the atmosphere being very unsteady and hazy during the day and raising fogs at night, made the procuring of long sights a trying and difficult matter within the extremely limited time at my disposal. I was due at the University of Cincinnati within two months after the actual determination of the meridians had been begun and there were two meridian lines, each 35-36 miles long, to determine and trace out, besides the making of magnetic observations. As no skilled assistance was available, I had to do all the observing and computing and such methods had to be adopted in the location of the lines as would make me as independent as possible of such assistants as had to be temporarily pressed into service. During the first part of the work there was considerable wet weather, and during the latter part, extensive forest fires filled the air with a dense smoke. The opening of the lines through the thick woods covering the mountain tops required, at times, heavy cuttings and thus caused vexatious delays. I traced the two meridian lines simultaneously and reached Mason and Dixon's line on October 15th, two months after my first camp. The next morning was spent in making magnetic observations, which I barely finished in time to make connections for the train to Cincinnati, arriving in Cincinnati Sunday morning and assuming my duties at the University the next day.

1051

Instruments.

The following instrumental outfit, belonging to the U. S. Coast and Geodetic Survey, and temporarily loaned to the Maryland Geological Survey, was at my disposal:

Eight inch Direction Theodolite, No. 132, and Stand.
Mean Time Chronometer, Dent 2256.
Magnetometer No. 18, and Stand.
Dip Circle 56/4440, and Stand.
50 Foot Steel Tape No. 86.

The special observing tent was loaned by the Maryland Geological Survey and two specially constructed heliotropes were purchased by the Boundary Survey.

The following data concerning eight inch theodolite No. 132, was furnished by the Superintendent of the Coast and Geodetic Survey:

Circle: Diameter 20 cm.; graduated to 10′ spaces, numbers increasing from right to left.
Telescope: focal length 42.5 cm.; clear aperture 44.2 mm., two eye-pieces, magnifying power of telescope with low power eye-piece, 23.6 diameters with high power eye-piece, 52 diameters.
Micrometers: single achromatic objectives, eye-pieces of 25 mm. equivalent focus, magnifying power of system about 45 diameters, 1 division of micrometer head = 2″.
Stride Level: 125 mm. x 15.5 mm. chambered vial, marked 7. 4″.5 "K & E" 1 division = 2 mm. 4″.424 at 23°, C.

1052 *The Verification of the Michler Meridian Line—the Fairfax Meridian.*

After careful deliberation, it was decided to make the Backbone Mountain, the highest mountain along the line and distant about three miles from the Fairfax Stone,* the principal station of the survey. That is, the astronomical direction of the meridian line was re-determined on the Backbone Mountain and then extended backward to the Fairfax Stone and forward to the Mason and Dixon line, the corrections of the Michler monuments being obtained on the line thus extended. In this way a straight line was traced out and any errors that may be due to local deflection of the plumb line were reduced to a minimum.

After determining approximately for Mr. Brown the direction of the meridian lines at the initial points of the two lines—the Fairfax Stone and the Potomac Stone—, and after making some magnetic observations at the Fairfax Stone, I moved my camp to the Backbone Mountain on Wednesday, August 18th, and made the necessary preparations for the determination of the meridian line. According to a copy of a manuscript report by Lieut. Michler and Commissioner Lee, in Mr. Sincell's possession, the Backbone Monument was 23.5 inches west of the meridian line passing through the Fairfax Stone. I accordingly selected my station at this distance east of the middle line of the base of the monument, and, for the convenience in observing, 7.28 feet north of the front face of the monument. Owing to the rains and fogs it took several nights before a satisfactory determination of the meridian line was obtained. The astronomical observations were made on Polaris, near eastern elongation, local mean time being obtained with sufficient accuracy by solar observations with the theodolite attachment of the magnetometer on the day previous and subsequent to the astronomical observations. The instrument used was the eight inch theodolite and the star was observed in five different positions of the circle in order to eliminate graduation errors as far as possible.

1053 In each position two readings were taken on the mark with telescope direct, then two readings on the star and level readings with telescope direct; next two readings on star and level readings with telescope reversed; and finally two readings on mark, telescope reversed, thus completing one set. The principal azimuth mark was on Sell's Hill, nearly two miles to the west, and consisted of a lantern enclosed in a box and shining through a half-inch hole. A secondary azimuth mark had been erected on Dawson Hill by Mr. Brown, about five miles to the north, and consisted of a bull's eye lantern enclosed in a box, the aperture of the box being about 1½ inch. On account of the prevalent fogs in the intervening glade, this light could not be utilized very often. Ob-

* The original Fairfax stone has disappeared since 1859, when Michler made his survey. The instrument pier, however, which Michler states he put directly back of the Fairfax Stone and which was afterwards built up in the form of a monument, was easily found and identified.

servations were made on three nights and the probable error of the resulting azimuth was O. "90. The determination of the astronomical direction was therefore a satisfactory one.

The next step was to ascertain whether the visible points of the Michler Line—the Fairfax Stone, three miles south, and the Lower* Hill monument, nine miles north—were in the meridian line as now determined.**

To this end careful and elabroate horizontal readings were taken between these two points and my azimuth marks. The angle in each case was determined in five positions of the circle and in order to vary the conditions, observations were made on lanterns at night and on poles during the day. The mean result of each angle consisted of at least 20 separate readings on the horizontal circle of the eight inch theodolite. *The final result of this work was that the Fairfax Stone was precisely in line with the meridian as re-*
determined. Thus far the Michler Meridian Line and my
1054 own coincided perfectly. The lower Hill Pole, which had been planted in the Michler Line by applying the corrections given in the manuscript report alluded to above, was found to be 15.2 seconds or 3.52 of a foot too far east. The Michler Monument on Lower Hill, consisting originally simply of a mound of earth and stones around a stake, and the stake having now rotted away, it was not of course possible to determine the Michler Line precisely at this point. However, the mound and stones were still there and likewise the hole where the stake had been. The entire mound was clearly to the east of my line. To mark my point permanently, I planted a large stone projecting above the ground about a foot and marked the station by a copper bolt sunk in the top of the stone. This is the only monument that I planted on the Michler Line, thereafter locating my points with reference to the established Michler monuments.

By backsighting on the Backbone signal from Lower Hill, I prolonged my line to Snaggy Mountain and again found the Michler Line was a trifle east. In the prolongation of the line, I did not use the ordinary method of engineers, viz: that of backsights and foresights, but instead used a method far more satisfactory under the existing conditions, viz: that of measuring the angle between my backsight and foresight, which had been set approximately in line by one of my assistants, generally Mr. Charles Ashby, who displayed considerable skill in this work. The angle was measured in five positions of the circle for primary points or stations and three for intermediate points, four readings being taken in each position, two with telescope direct and two with telescope reversed. With the aid of the approximate distance of the fore signal from the station, the correction to be applied to put it in line, was easily obtained. This method I found the most expeditious one under the circumstances and it made me practically independent of skilled or trained

* Spelled in Lieutenant Michler's Report as *Lauer.*

** Snaggy Mountain is likewise visible from Backbone Mountain, but owing to the unsatisfactory atmospheric conditions prevailing at the time, it was decided not to attempt getting this point from the Backbone station.

assistants. In most cases the angle was determined by observations at night on lanterns enclosed in boxes with suitable apertures. During the day the line would be approximately traced and
1055 cleared and finally located at night. The entire line was traversed from five stations, Backbone Mountain, Lower Hill, Snaggy Mountain, Fike's Hill and Sickle's Hill. The longest sight was 9¼ miles. It is possible from Snaggy Mountain to see south as far as Backbone Mountain, 17¼ miles away, and north Fike's Hill, 6½ miles.

At Snaggy Mountain on September 28th, I re-determined the Meridian Line.

As the Michler meridian and mine differed by nearly 7 feet at Snaggy Mountain, I decided to check my line by new azimuth observations. I accordingly on the night of the 28th of September made the necessary astronomical observations, using the same instruments and methods as at the Backbone Station. Four results were obtained, the mean having a probable error of about 1.2″. The azimuth of my pole on Fike's Hill, 6½ miles north of Snaggy, as obtained from the prolongation of the meridian determined at the Backbone, differed from that determined from the star observations at Snaggy Mountain by 5″, or in other words, the meridian line prolonged from the meridian to Fike's Hill, 23¾ Miles, was only 0.84 of a foot, and east from that freshly determined at Snaggy Mountain and prolonged to Fike's Hill. Not knowing how much of this apparent difference must be ascribed to local deflections of the plumb line, which may be expected in this region, it was decided not to make any change, but to prolong the Backbone meridian to the intersection of the Pennsylvania line.

Further details need not be given in this report as they can be obtained from the field notes. It will be sufficient for me to present a table giving the distance apart between the Michler Line and mine at various points along the line. It should be remarked that none of the Michler Monuments, according to the MS. Re-
1056 port, alluded to above, are precisely in the Meridian Line through the Fairfax stone, the monuments serving originally simply as piers for Lieutenant Michler's instruments. Michler gives in his report the corrections to each monument, but these corrections do not correspond with those in his field books, nor does it appear from a casual inspection of the field notes, how the corrections given in the MS. Report have arisen. It is quite possible that a careful revision of the field notes will explain these differences, as given below. For the present, corrections as given in the Report have been adopted.

For all practical purposes, the Michler Line may be regarded as having been sufficiently checked and as being a true north and south line passing through the Fairfax Stone.

1057 TABLE

Showing Distance Apart Between the Michler Meridian Line and the Bauer Meridian Line at Various Points.

Station.	Distance from Fairfax Stone. Miles.	Michler line east of his monuments.* Inches.	Michler line east of Bauer line. Feet.
Fairfax Stone	0.00	0.00	0.00
Backbone Mountain	2.9	23.5	0.00
Lower Hill	11.9	8.7	3.44
Snaggy Mountain	20.2	0.0	6.88
Fike' Hill	26.7	7.6	8.93
Mason & Dixon Line	36.3	28.8	13.25

The departure between the two lines amounts to about 4½ inches per mile.

1058 *The Meridian Line Starting at Potomac Stone—the Potomac Meridian.*

The principal station for this line was selected on top of the Backbone Mountain 495.9 feet north of the Potomac Stone, the same methods being employed for determining and prolonging the meridian line as already detailed in the previous pages. The two meridian lines were pushed along together. For example, after getting through on the Michler line at Backbone Mountain, I moved my camp over to the Potomac Stone and got the new line started as far as Foley Mountain, 9 miles distant. Then I proceeded to Rembold Hill and determined the distance apart between the two lines—the Fairfax and the Potomac Meridians. I pitched my next camp on Foley Mountain and prolonged the new meridian line to Taylor's Hill, 11 miles. The next camp was at Lower Hill on the Fairfax Meridian. I proceeded thus until I reached the Mason and Dixon Line.

As the new line was determined for the first time, its tracing out was a little more difficult than that of the Fairfax Line. The general method pursued was to send Mr. Charles Ashby ahead to some distant mountain, 8-10 miles away, telling him approximately where the line was going to cut. After reaching this point, he would climb a tree and give me a sun-flash by holding a small mirror in the proper position. He, in turn, would get signals from me, according to a fixed code, and would thus be put as nearly in line as possible. After getting the line cleared, he would erect a signal for day and for night observations and then I would make the necessary measurements for ascertaining how far the signal was out from the meridian line.

*As given in Lee's MS. Report a copy of which, as stated above, is in the possession of Mr. Sincell.

At Taylor's Hill, after having traced the meridian line 20 miles from the beginning, I tested its correctness by observations on Polaris, near eastern elongation on the night of October 1, and found it to be correct to within 1.2 seconds, or, in other words, practically perfect.

1059 No correction was necessary and the line prolonged to Fike's Hill, 3.7 miles away. From Fike's the line was extended to Roderhaeuer's hill 3⅓ miles and from thence to Robinson's 5 miles.

Owing to lack of time this was my last station on the Potomac Meridian Line, it being within a short distance of the Mason and Dixon Line. Mr. Brown carefully prolonged the line to its terminus.

Distance Between the Two Meridian Lines.

From observations made on Rembold Hill, (Potomac Meridian) and the Backbone Mountain, (Fairfax Meridian), it was found that the perpendicular distance * between the two lines at Rembold Hill is 5,977.1 feet, 1⅛ mile approximately.

As the two lines are true north and south lines, they will continue to approach each other, and in the present case, at the rate of nearly 1 foot per mile.** This will make the distance between the two lines at the Potomac Stone, *5981.1 feet,* and at Mason and Dixon Line, *5938.7 feet,* or about 42 feet less at the terminus of the line than at its origin.

Mr. Brown found by actual measurement that the distance at Mason and Dixon Line, between the two lines traced by me, was *5940.3 feet,* thus differing 1.6 of a foot from the computed distance. This is a most satisfactory check upon both of my lines. The Surveyor for West Virginia tested my line at a point 23½ miles from the Potomac Stone by triangulating across from the Fairfax meridian, as determined by me, to the Potomac meridian. The distance obtained thus by him differed from that computed on the assumption that my lines were true meridians, but 3.4 feet.

1060 *Approximate Longitude of the Potomac Meridian Line.*

Assuming that the longitude of the Mishler Line, as determined by himself, is 79° 29′ 10.6″ west of Greenwich and knowing the distance between the two meridian lines, as given above, I find that the longitude of the Potomac Meridian Line is,

79° 30′ 26.6″ W. of Greenwich
2° 27′ 27″ W. of Washington, or
0^h 09^m $49^s.8$.

* As the two meridian lines are so close to each other, the perpendicular distance between them may be regarded as the distance along a parallel of latitude.

** The angle of convergence of the two meridians may be taken as the same along the entire line and amounts to 48″ and hence the two lines converge at the rate of 1.23 foot per mile.

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Approximate Latitude of the Potomac Stone.

With the aid of the distance north of the Backbone Monument from the Fairfax Stone, as determined by Michler, and having determined by triangulation between Rembold Hill and the Backbone Monument, that my Rembold Station was 9838 feet north of the Backbone Monument, and next knowing the distance of the Rembolt Station form the Potomac Stone, as determined by Mr. Brown, I obtained for the latitude of the Potomac Stone

39° 12′ 44″,

as based upon Michler's determinations of the latitude of the Fairfax Stone, viz:

39° 11′ 32.5″.*

The Potomac Stone is about 7200 (1⅓ miles) north and 5981 feet (1⅛ mile) east of the Fairfax Stone and bears about 39.7° W. of N. (From circum-meridian altitudes of the sun on August 16th, 1897, with the small 4½ inch theodolite, I found the approximate latitude of the Potomac Stone to be 39° 13.0′.)

The latitude of Mason and Dixon, Line, according to observations in 1883, by Mr. Sinclair of U. S. Coast and Geodetic Survey, is 39° 43′ 18″.

1061

Total Length of the Lines.

Fairfax Meridian Line: 36.35 miles, as measured by Michler.
Potomac Meridian Line; 34.67 " " " " Brown.

Magnetic Observations.

Complete magnetic observations were made at Fairfax Stone, Camp Fairfax, Backbone Mountain, Foley's Mountain, Lower Hill, Snaggy Mountain, Taylor's Hill and Fike's Hill, on both lines, and at intersection of Fairfax Meridian with Mason and Dixon's Line. The values of the magnetic declination are given below.

*As given in Lee's Report alluded to above.

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1062 *Magnetic Declinations Observed in* 1897 *by L. A. Bauer With the Coast & Geodetic Survey Magnetometer No.* 18, *and at the Expense of the Western Boundary Survey.*

Station.	Latitude.	Longitude.	Date of observation.	Magnetic declination * for Oct. 1, 1897, & Jan. 1, 1900.		Location.	
Fairfax Stone A	39° 11.6′	79° 29.2′	1897 Aug. 4 & 6	3° 09.6′ W.	3° 16.4′ W.	At the Stone.	Fairfax Meridian.
" Stone B	39 11.7	79 29.2	" Aug. 5 & 6	3 05.6	3 12.4	463 ft. north	
Camp Fairfax	39 12.7	79 29.0	" Aug. 7 & 8	3 06.2	3 13.0	Flynn's Farm	
Backbone Mtn	39 14.1	79 29.2	" Aug. 22, 23 & 28	3 07.2	3 14.0	Michler Mon.	
Lowe Hill	39 21.9	79 29.2	" Sept. 25	3 16.7	3 23.5	Bauer's Stone	
Snaggy Mtn.	39 29.1	79 29.2	" Sept. 28 & 29	3 37.2	3 44.0	Michler Mon.	
Fike's Hill	39 34.7	79 29.2	" Oct. 8	3 40.2	3 47.0	" "	
Mason & Dixon Line	39 43.3	79 29.2	" Oct. 16	3 47.3	3 54.1	273 ft. north of Michler Mon.	
Foley's Mtn	39 20.8	79 30.4	" Sept. 16 & 21	3 16.0	3 22.8	Bauer's Sta.	
Taylor's Hill	39 30.0	79 30.4	" Sept. 30 & Oct. 1	3 31.7	3 38.5	Bauer's Station.	Potomac Meridian.
Fike's Hill	39 33.9	79 30.4	" Oct. 13	3 40.3 W.	3 47.1 W.	" "	

(For Isogenic Map, see Plate VIII.)

*The declinations given are the mean values for the entire day of 24 hours. October 1, 1897, is about the middle date of the survey.

1063 *Magnetic Declinations Observed from* 1896–'99 *by L. A. Bauer in Garrett County With the Coast and Geodetic Survey Magnetometer No.* 18, *and at the Expense of the Maryland Geological Survey and the Coast and Geodetic Survey.*

Station.	Latitude.	Longitude W. of Gr.	Date of observation.	Magnetic declination for Oct. 1, 1897, and Jan. 1, 1900.		Location.
Corunna	39° 16.6′	79° 22.6′	1897, July 31	3° 16.7′ W.	3° 23.5′ W.	Brown's N. M. Stone.
Oakland	39 24.6	79 24 6	1896, '97 & '99	3 22.0	3 28 8	S. M. Stone Court House.
McHenry	39 33.4	79 21.2	1899, June 6	3 31.2	3 38.0	
Swanton	39 27.0	79 12.3	1899, June 9	3 31.5	3 38.3	
Accident	39 37.6	79 19.0	1899, June 6	3 39.7	3 46.5	
Grantsville	39 41.6	79 09.1	1899, June 7	3 53.3	4 00.1	
New Germany	39 37.9	79 07.2	1899, June 8	3 53.9	4 00.7	

(This table is supplied with the permission of the State Geologist and the Superintendent of the Coast & Geodetic Survey.)

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1064 PLATE I.

Here follows photograph, marked: "View showing the east-side of the Michler Monument, placed behind the Fairfax Stone in 1859 as it appeared in *1898*. It will be noticed that the monument between 1898 and 1899 had been tampered with."

PLATE II.

Here follows photograph, marked: "View showing the east side of the Michler Monument placed directly behind the Fairfax Stone in 1859, as it appeared in August, 1899. The pole to the left of the monument, *i. e.;* on the south side of it, is the one sighted on from the Backbone Mountain in verifying the Michler Line in 1897.

This view also shows the disappearance of the original Fairfax Stone planted in 1765-66. According to the description in Lt. Michler's report, the original Fairfax Stone was directly in front of the monument shown above, *i. e.,* on the south side right hand side)."

PLATE III.

Here follows photograph, marked: "The Potomac River at the point where the Fairfax line crosses, ¾ mile north of Fairfax Stone. The man has hand on line stake and is looking north along the line."

"This shows that a goodsized stream flows from the west towards the east. It would be impossible to comply with the acts of the Maryland and Virginia Assemblies passed in 1852 & 1858 that the line is to *begin* at the Fairfax Stone and that part of the Maryland charter terminating the western boundary at the 'further bank' of the Potomac."

PLATE IV.

Here follows photograph, marked: "View showing the Michler Monument on the Backbone Mountain as it appeared in August, 1899, similar monuments are at N. W. Va. turnpike, Snaggy
1065 Mtn Fike' Hill and at intersection of line with Pennsylvania line. The pole marks the site of L. A. Bauer's astronomical station of 1897. This point and the Fairfax pole were found to be exactly in the true meridian line and from this point the line was prolonged to the northward. The observer is supposed to be at the north side of the monument and looking south towards Fairfax stone (Michler Monument)."

PLATE V.

Here follows photograph, marked: "Triangulation Station on Foley Mountain, showing Instruments"

PLATE VI.

Here follows photograph, marked: "U. S. Coast and Geodetic Survey Magnetometer No. 18. Instruments used in determining magnetic Elements during Western Boundary Survey."

PLATE VII.

Here follows photograph, marked: "8" direction Theodolite."

PLATE VIII.

Here follows map, marked: "Lines of Equal Magnetic Declination for Garrett Co. Oct. 1, 1897. By L. A. Bauer.

(Endorsed:) Supreme Court U. S. No. 1, Original, October Term 1907. Maryland, West Virginia. Filed Oct. 15, 1907. Bauer Report. Exhibit Brown No. 8.

1066 EXHIBIT BROWN NO. 9.

Thomas Hall, His Patent, "The Royal Charlotte," 2000 Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that whereas Samuel Chase, Esquire, had on the twelfth day of April, Seventeen hundred and seventy-four, surveyed for him a tract or parcel of land called "The Royal Charlotte" lying then in Frederick County but now in Washington and containing two thousand acres, by virtue of fourteen hundred and eighty acres part of a Special Warrant for two thousand acres, and five hundred and twenty acres part of a Common Warrant, for fifteen hundred acres, both granted him out of the Proprietary's land office according to the Conditions of Plantation, the twenty-fifth day of March, Seventeen hundred and seventy-four, as appears: That the said Samuel Chase, Esquire, by an assignment dated the fifteenth day of January, Seventeen hundred and eighty-five, transferred and made over all his right, title, interest and claim of in and to the certificate of the aforesaid survey and the land therein mentioned unto Thomas Hall of Harford County, and the right of the Proprietary being now vested in The State of Maryland.

The State of Maryland, doth hereby grant unto him the said Thomas Hall the aforesaid tract or parcel of land called "The Royal Charlotte" lying in Washington County aforesaid.

Beginning at the end of the eighth line of the Manor on the Youghyongany River containing seventeen thousand seven hundred and fifty acres and running thence North, twenty-six degrees East, eight hundred and eighty-two perches; North, sixty-four degrees West, three hundred and fifty-five perches; South, twenty six degrees West, nine hundred and forty-four perches; then with a straight line to the beginning.

1067 Containing and now laid out for Two thousand acres, according to the Certificate of Survey thereof taken and returned to the Land Office bearing date the twelfth day of April, Seventeen hundred and seventy-four, and there remaining Together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said Thomas Hall his heirs and assigns forever.

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Given under the Great Seal of the State of Maryland this fourteenth day of May, Seventeen hundred and eighty-seven.

Witness the Honorable John Rogers, Esquire, Chancellor.

W. SMALLWOOD. [THE GREAT SEAL.] J. ROGERS, *Ch.*

LAND OFFICE OF MARYLAND, *sct:*

I hereby Certify that the aforegoing is a true Copy of the Patent of "The Royal Charlotte" 200- acres, as recorded in Liber I. C. No. C. folio 249, one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this third day of September nineteen hundred and six.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

(Endorsed:) Copy Thomas Hall, his Patent "The Royal Charlotte" 2000 acres. Exhibit Brown No. 9. Supreme Court U. S. No. 1. Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1068 EXHIBIT BROWN No. 10.

Thomas Hall of Harford County, in the State of Maryland,
to
Robert Morris, Esq., of the City of Philadelphia, in the State of Pennsylvania, Merchant.

Deed dated the 25th day of March, 1789, acknowledging the receipt of £1490, Current Money as the Consideration for all those two tracts of land (to-wit) the Royal Charlotte and Chance lying and being in Washington County and State of Maryland the first containing 2000 the other 980 acres of land together with the appurtenances thereunto belonging or in any wise appertaining.

Enrolled April 30th, 1789.

Recorded the 19th of March, 1790.

Test: ELIE WILLIAMS, *Cl'k.*

LAND OFFICE OF MARYLAND, *sct:*

I Hereby Certify, that the aforegoing is a true Copy of a Deed from Thomas Hall to Robert Morris, Deed dated 25th March, 1789, as recorded in Liber J. G. No. 3 A folio 246, one of the Record Books on file in this Office.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this fifteenth day of July, nineteen hundred and seven.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

(Endorsed:) Copy Deed from Thomas Hall to Robert Morris. Exhibit Brown No. 10. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia Filed Oct. 15, 1907.

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1069 EXHIBIT BROWN No. 11.

This indenture made this seventh day of September in the year of our Lord One thousand seven hundred and ninety seven, between Robert Morris of the City of Philadelphia and the State of Pennsylvania Esquire and Mary his wife of the one part, and George Graham and John Graham Executors of the Last Will and Testament of Richard Graham late of Dumfries and State of Virginia deceased of the other part,

Whereas by Indenture dated the twenty-fifth day of March, one thousand seven hundred and eighty-nine, a certain Thomas Hall of Harford County, State of Maryland, for and in consideration of certain sums of money to him in hand paid by the said Robert Morris did grant bargain and sell enfeoff and confirm unto the said Robert Morris his heirs and assigns forever all those two tracts of land, to wit, the Royal Charlotte, and Chance, lying and being in Washington County, State of Maryland, originally on the twelfth and fourteenth days of April in the year One thousand seven hundred and seventy-four, surveyed for Samuel Chase, Esquire, and on the fourteenth day of May, One thousand seven hundred and eighty seven, granted unto Thomas Hall, as reference being had to the Patents will more fully appear, the first containing two thousand, the other nine hundred and eighty acres of land, together with the appurtenances thereunto belonging or in any wise appertaining, Now therefore this Indenture Witnesseth that the said Robert Morris and Mary his wife for and in consideration of the sum of fourteen thousand nine hundred dollars to them in hand paid at or before the ensealing and delivery of these presents by them the said George Graham and John Graham the receipt whereof is hereby acknowledged have granted bargained sold aliened enfeoffed released and confirmed and by these presents do grant bargain and sell
1070 alien enfeoff release and confirm unto the said George Graham and John Graham their Executors Administrators and Assigns all that tract of land commonly called The Royal Charlotte, lying in Washington County, State of Maryland, bounded and described as follows, to wit:

Beginning at the end of the eighth line of the Manor on the Youghyougany River containing seventeen thousand seven hundred and fifty acres and running thence North twenty-six degrees East eight hundred and eighty-two perches, North sixty-four degrees West three hundred and fifty-five perches, South twenty-six degrees West nine hundred and forty-four perches, then with a straight line to the beginning. Containing Two thousand acres of land be the same more or less, also all that other tract of land commonly called Chance, lying and being in Washington County aforesaid bounded and described as follows, to wit:

Beginning at the end of the second line of a tract of land called "Mount Pleasant", surveyed for Baker Johnson the thirteenth day of April, One thousand seven hundred and seventy-four and running thence South forty-nine degrees East one hundred and forty-

five perches, North forty-five degrees East five hundred and ninety five perches, North forty-nine degrees West two hundred and sixty-five perches, South forty-five degrees West five hundred and ninety-two perches, then with a straight line to the beginning. Containing Nine hundred and eighty acres of land be the same more or less, together with all and singular the houses barns buildings stables yards gardens orchards lands tenements meadows pastures woods underwoods ways waters water courses profits commodities advantages emoluments hereditaments and appurtenances whatsoever to the said two tracts of land belonging or in any wise appertaining and the reversion and reversions remainder and re-
1071 mainders yearly and other rents issues and profits thereof and every part and parcel thereof and also all the estate right title interest trust property claim and demand whatsoever both at law — in equity of them the said Robert Morris and Mary his wife in to or out of the said two tracts of land To Have and To Hold the said two tracts of land with their and every of their appurtenances unto the said George Graham and John Graham their Executors Administrators and Assigns forever, And the said Robert Morris doth warrant and defend the aforesaid two tracts of land from all manner of persons claiming by from or under him the said Robert Morris his heirs or assigns.

In witness whereof the parties to these presents their hands and seals have subscribed and set the day and year first above written.

ROBERT MORRIS. [SEAL.]
MARY MORRIS. [SEAL.]

Signed, sealed and delivered in the presence of us

GARRETT COTTRINGER.
WM. W. MORRIS.
EDWARD J. COALE.
JOHN RICHARD, JR.

At the foot and on the back of the aforegoing deed was thus written to wit:

Mary Morris the wife of Robert Morris grantor in the before recited Indenture appeared the 16th day of September One thousand seven hundred and ninety-seven before the subscriber one of the Judges of the Supreme Court of Pennsylvania and the said Mary being by me privately examined apart from and out of the hearing of her husband did renounce and relinquish her right of dower in and to the lands in the said Indenture mentioned, and acknowledged the same to be the right and estate of the said Grantees
1072 George Graham and John Graham and declared that she made the said acknowledgment and renunciation freely and willingly and without being thereto induced by fear or threats of ill usage by her husband or fear of his displeasure.

The words George Graham and John Graham being first interlined.

THOMAS SMITH. [SEAL.]

THE STATE OF PENNSYLVANIA, *sct:*

Know All Men that I Robert Morris, Grantor named in the within deed of Bargain and Sale hereby authorize and appoint John Mason of George Town and —— Gwynn of Allegany County, Maryland, or either of them my Attorney in fact and law for the purpose of acknowledging the said deed of bargain and sale according to the laws and regulations of the said State of Maryland, empowering and directing the said John Mason and —— Gwynn or either of them by these presents to appear for me and in my behalf before any Court Judge or Justice of the said State and fully to convey and transfer by acknowledgment of the said within deed the lands therein mentioned to George Graham and John Graham the said grantees, hereby confirming every thing which the said John Mason and —— Gwynn or either of them shall do in the premises.

In witness whereof I have hereunto set my hand and seal at Philadelphia this 14th day of September, One thousand seven hundred and ninety-seven.

ROBERT MORRIS. [SEAL.]

Sealed and delivered in the presence of
WM. W. MORRIS.
1073 EDWARD J. COALE.
CHARLES MORRIS.
JOHN RICHARD, JR.

STATE OF MARYLAND, *sct:*

On the twenty-sixth day of September in the year One thousand seven hundred and ninety-seven, personally appeared Edward J. Coale one of the subscribing witnesses to the within power of attorney before me the subscriber Jeremiah Townley Chase one of the Judges of the General Court of the State of Maryland and made oath on the Holy Evangels of Almighty God that he saw Robert Morris seal and deliver the within power of attorney as his act, and that this deponent subscribed his name as a witness thereto.

Sworn to before
JEREMIAH TOWNLEY CHASE.

STATE OF MARYLAND, *To wit:*

This day Robert Morris the Grantor within named by John Mason his attorney in the annexed power named appeared before me Jeremiah Townley Chase one of the Judges of General Court of the State of Maryland, and acknowledged the within instrument of writing to be the act and deed of him the said Robert Morris for the purposes therein mentioned. Given under my hand this sixteenth day of October, One thousand seven hundred and ninety-seven.

Taken before
JEREMIAH TOWNLEY CHASE.

Recorded the 16th day of October, 1797.

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1074 LAND OFFICE OF MARYLAND, *sct:*

I hereby Certify that the aforegoing is a true Copy of a Deed from Robert Morris, *et ux.*, to George and John Graham, Extrs., dated Sept. 8th, 1797, as recorded in Liber J. G. No. 4 folio 605 &c., one of the Records Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this fifteenth day of July nineteen hundred and seven.

[Seal of The Land Office of Maryland.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy. Deed from Robert Morris, *et ux.* to George & John Graham, Extrs. Exhibit Brown No. 11. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia Filed Oct. 15, 1907.

1075 EXHIBIT BROWN No. 12.

At the request of Samuel Vincent the following deed was recorded the 16th day of June 1814:

This indenture, Made this twenty sixth day of May in the year of our Lord one thousand eight hundred and fourteen, between George Graham and John Graham Executors of the last will and Testament of Richard Graham, deceased, late of the Town of Dumfries, Prince William County and State of Virginia, Richard Brent and Alexander Henderson of the same County and State, of the one part and Samuel Vincent, administrator of all and singular the goods and chattels, rights and credits of Richard Curson, deceased late of Baltimore and State of Maryland, of the second part. Whereas the said George Graham and John Graham as executors aforesaid in virtue of and by the authority of a Decree of the High Court of Chancery of Virginia, pronounced in a suit wherein the said George Graham Executor of Richard Graham is Plaintiff and Nathanial Pope Williams, Executor of John Hardy and others, are defendants, did on the eighteenth day of June in the year eighteen hundred and two, make and execute to the said Richard Brent, Alexander Henderson and a certain Thomas Lee Senior, Deceased, in trust, all the lands which the said George Graham and John Graham held, claimed and were entitled to either in law or Equity under the Will of the said Richard Graham, deceased, a part of which land intended to be conveyed by the said George Graham and John Graham under the said decree to the said Richard Brent, Alexander Henderson and Thomas Lee, senior, was two tracts of land situate in the County of Washington, but now in the County of Allegany and State of Maryland, one called the Royal Charlotte containing two thousand acres, and the other called Chance containing nine hundred and eighty acres both together containing two thousand nine

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hundred and eighty acres, conveyed in fee simple to the said
1076 George Graham and John Graham by the names of George Graham and John Graham Executors of Richard Graham, by Robert Morris and his wife of the City of Philadelphia by deed bearing date on the seventh of September, Seventeen hundred and ninety seven, which property was conveyed by the said Robert Morris in payment of, and to be applied by the said George Graham and John Graham in discharge of two Bills of Exchange, the one for seventeen hundred dollars, and the other for three thousand six hundred and fifty one dollars, drawn by the said Richard Graham, the first on the fifth of May payable ninety days after date, and the other on the twenty second of June, seventeen hundred and ninety five, payable on the first day of January, seventeen hundred and ninety six, in favor of the said Richard Curson, deceased, which Bills were accepted by the said Robert Morris, And Whereas, the creditors of the said Richard Curson have agreed that the said Samuel Vincent should take from the said George Graham and John Graham, Executors of the said Richard Graham, and the said Richard Brent and Alexander Henderson A conveyance to him the said Samuel Vincent, as administrator aforesaid, for the said two tracts of land containing together, as estimated two thousand nine hundred and eighty acres of land, then in the said County of Washington but now in the County of Allegany and State of Maryland, for the use of the creditors of the said Richard Curson deceased, a list of the said creditors annexed to this deed, and in the hand writing of the said Samuel Vincent, And Whereas the Court of Chancery for the Richmond (District) District in Virginia hath by their Decree dated the twenty third day of February eighteen hundred and twelve, pronounced in the suit aforesaid of George Graham Executor of Richard Graham against Nathaniel P. Williams Executor of John Hardy and others,
authorized the said Richard Brent and Alexander Henderson
1077 the surviving Trustee- under the decree aforesaid, to convey the said tracts of land herein before mentioned to the said Samuel Vincent, Administrator aforesaid, for the use and benefit of the aforesaid creditors of the said Richard Curson, deceased. And Whereas, the said George Graham and others, for the purpose — carrying into complete effect the aforesaid herein before recited agreement of the said parties, and the Decrees of the said Court, did by Deed bearing date of the eighth day of October, eighteen hundred and twelve, convey to the said Samuel Vincent, Administrator as aforesaid, his heirs and assigns the aforesaid two tracts of land called "The Royal Charlotte" and "Chance" which deed is materially defective in as much, as the same was not acknowledged according to the Laws of the said State of Maryland.

Now Therefore This Indenture, Witnesseth, that the said George Graham and John Graham Executors of Richard Graham, aforesaid, and Richard Brent and Alexander Henderson, surviving Trustees, aforesaid, in consideration of the Premises and of the sum of five dollars to them paid by the said Samuel Vincent, Administrator of the said Richard Curson, deceased, at or before the ensealing and delivery of these presents, the receipt whereof is herby acknowldged,

have bargained and sold, and by these presents do and each of them doth bargain and sell unto the said Samuel Vincent, administrator as aforesaid, his heirs and assigns the aforesaid two tracts of land formerly situate as aforesaid in the said County of Washington, but now in the County of Allegany and State of Maryland aforesaid, one called "The Royal Charlotte" containing two thousand acres, and the other called "Chance" Containing nine hundred and eighty acres (conveyed in fee simple to the said George Graham and John Graham by the names of George Graham and John Graham, Executors of Richard Graham, by Robert Morris and his wife, of the City of Philadelphia, by deed bearing date on the seventeenth
1078 of September Seventeen hundred and ninety seven, which property was conveyed by the said Robert Morris, in payment of and to be applied, by the said George Graham and John Graham in discharge of two Bills of Exchange, the one for seventeen hundred Dollars, and the other for three thousand six hundred and fifty one dollars, drawn by the said Richard Graham, the first on the fifth day of May, payable ninety days after date, and the other on the twenty second of June, seventeen hundred and ninety five, payable on the first of January, seventeen hundred and ninety six, in favor of the said Richard Curson, deceased, which bills were accepted by the said Robert Morris) together with all and singular the houses, barns, buildings, stables, yards, gardens, privileges, profits, commodities, advantages, emoluments, hereditaments and appurtenances whatsoever to the said two tracts of land belonging or appertaining, and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof, and of every part thereof. To have and to hold the said two tracts of land, with the tenements hereditaments, and all and singular other the premises herein before mentioned or intended to be bargained and sold, and every part and parcel thereof, with every of their (rights) rights members and appurtenances unto the said Samuel Vincent, administrator, as aforesaid, his heirs and assigns forever, to and for the only proper use and behoof of him the said Samuel Vincent, Administrator as aforesaid his heirs and assigns forever. And the said George Graham and John Graham, Executors of Richard Graham aforesaid, and the said Richard Brent and Alexander Henderson, surviving Trustees as aforesaid, for themselves their heirs, Executors and administrators, do hereby covenant, grant, promise and agree to and with the said Samuel Vincent, his heirs Executors and assigns, that they
1079 the said George Graham and John Graham, Executors as aforesaid of the said Richard Graham, and Richard Brent and Alexander Henderson, surviving, Trustees as aforesaid, and their and each of their heirs, the said two tracts of land, with all and singular the premises and appurtenances before mentioned to him the said Samuel Vincent, his heirs and assigns, against them the said George Graham and John Graham, Executors of Richard Graham aforesaid, and Richard Brent and Alexander Henderson, surviving Trustees, as aforesaid, and their and each of their heirs, and against all and every person or persons whomsoever claiming or to claim under them or either of them any right, title or interest in and

to the same or any part thereof, shall and will warrant and forever defend by these presents for themselves, respectively so far as the said trustees have power legally, or equitably to do by Virtue of the Decree of the said Court. And this Indenture further Witnesseth, that the said George Graham and John Graham, Executors aforesaid, and the said Richard Brent and Alexander Henderson, surviving Trustees, aforesaid have made, ordained, authorized, nominated and appointed, and by these presents do make, ordain, authorize, nominate and appoint their friend George Grundy of the City of Baltimore in the State of Maryland aforesaid, their true and lawful attorney, for them and in their names, and on their behalf, and in their stead to appear before any Judge or justice or justices or any other person or persons whomsoever, authorized either by the Laws of the United States or of the State of Maryland, and to acknowledge the aforegoing deed as their Act and Deed, of them the said George Graham, John Graham, Richard Brent and Alexander Henderson according to the true intent and meaning thereof in order that the same may be recorded according to the laws of the said State of Maryland.

In Witness Whereof, the said George Graham, John Gra-
1080 ham, Richard Brent and Alexander Henderson, have hereunto subscribed their names and affixed their Seals, on the day and year first above written.

GEORGE GRAHAM. [SEAL.]
RICH'D BRENT. [SEAL.]
—— ——. [SEAL.]
ALEX. HENDERSON. [SEAL.]

Signed, Sealed & Delivered in the Presence of

SALLY B. H. MASON,
RICHARD B. MASON,
as to Geo. Graham.
ARCH RITCHIE,
RICHARD B. MASON,
as to Alex. Henderson.
THOMAS LAW,
RICHARD B. MASON,
as to Richard Brent.

DISTRICT OF COLUMBIA,
WASHINGTON CITY, *sct:*

Personally appeared before me the subscriber, Mayor of the City of Washington Richard B. Mason one of the witnesses to the execution of the within & foregoing deed who made oath on the Holy Evangels of Almighty God, that he saw George Graham, Richd, Brent and Alex'dr Henderson Grantors in the said deed, sign, seal and acknowledge the same to be their act and deed, Delivered for the purposes, therein mentioned, and that he witnessed the same at their request.

In Testimony whereof I have hereunto set my hand as Mayor and

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caused the Seal of the City of Washington to be affixed this twenty seventh day of May, one thousand eight hundred and fourteen.

[SEAL.] JAMES H. BLAKE, *Mayor.*

STATE OF MARYLAND,
Baltimore County, sct:

Be it remembered that on this sixth day of June in the year eighteen hundred and fourteen, before the subscriber an Associate Judge of the Sixth Judicial District of the State of Maryland, personally appears George Grundy, Attorney, appointed by the power of Attorney contained in the aforegoing Deed for John Graham and by virtue and in pursuance of the power and authority thereby given doth acknowledge the said deed to be the act and deed of
1081 the said John Graham according to the purport, true intent and meaning thereof, and the Acts of Assembly in such cases made and provided. Acknowledged before me, Theodorick Bland, also Ju. 6th Ju. D. Maryland.

The following list of debts due from the estate of late Mr. Richard Curson Senior, as presented for payment, and a list made out by Mr. John Stewart, a Clerk in his employ was annexed to the within deed:

Royquette & Beeldemaker of Rotterdam presented by B. & G. Williams	$694.96
Samuel Span presented by Goe, Grundy	2241.00
Robert Dorsey	1539.34
Fulford & Lorman	2380.50
Isaih Mankin	500.00
McQuim & Barrow	600.00
Estate of Richard Curson Sr.	301.12
John F. Pleasants	263.00
Richard Benson	246.15
Dr. Littlejohn	74.78
John & James Roberts	24.16
G. W. Todd	12.42
John Craig	16.00
Thomas Worrell	34.03
Owings & Cheston	71.40
James Bryden	21.33
Thomas Dobbin	26.25
Thorndick Chase	21.00
McDonald & Ridgely	19.50
1082 Burmister & Nash of LonDen, Presented by Mr. Hazelhurst	261.06
	$9348.00

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From Mr. J. Stewart's list for sundries for Brig Fame:

Cumberland D. Williams	19.00	
Payson & Smith	72.00	
G. W. Todd	4.33	
A. Deweese	3.00	
Isreal day	2.76	
Yundt & Brown	4.25	
		105.34
		$9453.34

David Stewart for a foreign debt not left with me.
Baltimore, Feby. 5th, 1814.

E. E. SAM'L VINCENT,
Adm'r Rich'd Curson, Sen.

STATE OF MARYLAND,
Allegany County, To-wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing is a true copy of Deed recorded in Liber "G" folio 400 &c. one of the Land Records of said Allegany County.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court, this 12" day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: George and John Graham Executors to Samuel Vincent Adm'r &c. Cert. Copy Deed. Exhibit Brown No. 12. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15. 1907.

1083 EXHIBIT BROWN NO. 13.

At the request of William Lorman the following deed was recorded the 15th day of April 1817:

This Indenture made this fifteenth day of November in the year of our Lord Eighteen hundred and sixteen, between Samuel Vincent of Baltimore County, in the State of Maryland, Administrator of all and singular the goods and chattels rights and credits of Richard Curson, deceased of the one part, and William Lorman of the same County and State, Merchant, of the other part,

Whereas, George Graham and John Graham Executors of the last Will and Testament of Richard Graham, deceased, late of Dumfries Prince William County and State of Virginia, Richard Brent and Alexander Henderson of the same County and State, by their deed bearing date on or about the twenty sixth day of May, eighteen hundred and fourteen, for the consideration therein mentioned did, bargain sell and convey unto the said Samuel Vincent, Administrator as aforesaid, his heirs and assigns forever, in trust for the use of the creditors of the said Richard Curson, deceased, two tracts of land situate lying and being in the County of Allegany and State of

Maryland, one called the "Royal Charlotte" containing two thousand acres and the other called "Chance" containing nine hundred and eighty acres, making two thousand nine hundred and eighty acres of land in the whole, which by having reference to the said deed duly executed and recorded among the Land records of Allegany County, in Liber C folio 400, 401, 402 and 403 will more fully and at large appear, being the same two tracts of land originally on the twelfth and fourteenth days of April, seventeen hundred and seventy four, surveyed for Samuel Chase and on the fourteenth day of May, seventeen hundred and eighty seven granted unto Thomas Hall of Harford County and State of Maryland as reference being had
1084 to the patents will more fully appear, also the same two tracts of land heretofore conveyed by the said Thomas Hall to Robert Morris of Philadelphia and State of Pennsylvania his heirs and assigns forever by Indenture bearing date on or about the twenty first day of March seventeen hundred and eighty nine; also the same two tracts of land heretofore conveyed by the said Robert Morris and wife to the said George Graham and John Graham, Executors as aforesaid, their heirs and assigns forever, reference being had to the deed dated on or about the seventh day of September, seventeen hundred and ninety seven and recorded on the sixteenth day of October in the same year among the Land Records of the late General Court for the Western Shore of Maryland belonging to the office of the Court of Appeals for the said Shore in Liber J. G. No. 4 folio 605 &c., will more fully appear together with all and singular the houses, lanes, buildings, stables, yards, gardens, privileges, profits, commodities, advantages, emoluments, hereditaments and appurtenances whatsoever to the said two tracts of land belonging or appertaining, and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof and every part thereof forever. And Whereas by and with the advice and consent of the said Creditors of Richard Curson, deceased, the said Samuel Vincent did advertise and cause to be put up at public auction on the twenty first day of October eighteen hundred and sixteen the said two tracts of land separately, when they were respectively knocked down to the said William Lorman he being the highest bidder at one dollar and five cents per acre for the tract called the Royal Charlotte and ninety nine cents per acre for the tract called Chance, amounting to three thousand and seventy dollars and twenty cents as appears by the Auctioneers' account, sales hereto annexed.

1085 Now Therefore This Indenture Witnesseth, That the said Samuel Vincent, for and in consideration of the sum of three thousand and seventy dollars and twenty cents, current money of the United States, being the purchase money aforesaid to him in hand well and truly paid by the said William Lorman at or before the sealing and delivery of these presents, the receipt the said Samuel Vincent doth hereby acknowledge and confess himself to be therewith satisfied, contented and paid thereof and there from, and of and from every part and parcel thereof, doth release, acquit and forever discharge the said William Lorman, his heirs, executors and

administrators by these presents the said Samuel Vincent hath given, granted, bargained, sold, aliened, enfeoffed, conveyed, released and confirmed and by these presents doth give, grant, bargain, sell, alien, enfeoff, convey, release, and confirm unto the said William Lorman his heirs and assigns all the aforesaid two tracts of land respect*fu*lly bounded and described as follows, agreeably to the aforesaid deed from Morrison and wife, Viz:

Beginning for the tract called Chance at the end of the second line of a tract of land called Mount Pleasant, surveyed for Baker Johnson the thirteenth day of April seventeen hundred and seventy four and running thence South forty nine degrees East one hundred and forty five perches, North forty five degrees East five hundred and ninety five perches, North forty nine degrees West two hundred and sixty five perches, South forty five degrees West five hundred and ninety two perches, then with a straight line to the beginning. Containing Nine hundred and eighty acres of land, be the same more or less. And Beginning for the tract called The Royal Charlotte at the end of the eighteenth line of the Manor on the Youghyougany River containing seventeen thousand seven hundred and fifty acres and running thence North twenty six de-
1086 grees East eight hundred and eight- two perches, North sixty four degrees West three hundred and fifty five perches, South twenty six degrees West nine hundred and forty four perches then with a straight line to the beginning. Containing two thousand acres of land, be the same more or less. Together with all and singular the buildings and improvements upon said two tracts of land, erected made or being, and all and every the rights, liberties, privileges, hereditaments, appurtenances and advantages to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and all the estate, right, title, use trust, possession, property claim and demand whatsoever both in law and equity of the said Samuel Vincent of in unto and out of the same, To have and to hold the said two tracts of land and premises above described and hereby conveyed or meant, mentioned or intended hereby so to be with their and every of their appurtenances unto the said William Lorman, his heirs and assigns to the only proper use and behoof of the said William Lorman, his heirs and assigns forever and to and for no other use, intent or purpose whatever. And the said Samuel Vincent for himself his heirs executors and adminstrators, doth covenant, grant, promise and agree to and with the said William Lorman, his heirs and assigns by these presents in manner following, that is to say that the said Samuel Vincent and his heirs the said two tracts of land and premises above described and hereby conveyed or meant, mentioned or intended hereby so to be, with the appurtenances from and against him the said Samuel Vincent and his heirs and all every other person or persons legally or equitably claiming or to claim any estate or interest *interest* therein by from or under him, them or any of them unto the said William Lorman
his heirs and assigns shall and will warrant and by these pres-
1087 ents forever defend. And also that the said Samuel Vincent his heirs, shall & will at any time or times hereafter at the

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reasonable request and proper cost and charge in law of the said William Lorman his heirs or assigns make, do, execute and deliver or cause or procure so to be done all such further and other acts, deeds assurances and conveyances in the law as the said William Lorman, his heirs or assigns or his or their counsel learned in the law may or shall reasonably advise, devise and require for the better and more perfectly granting, releasing, assigning and conveying unto the said William Lorman his heirs and assigns all such estate and interest as the said Samuel Vincent now hath or at any time heretofore had in the said two tracts of land and premises above described and hereby mentioned to be conveyed according to the purport true intent and meaning of these presents.

In Testimony Whereof the said Samuel Vincent hath hereunto subscribed his name and affixed his seal the day and year first above written.

SAMUEL VINCENT. [SEAL.]

Signed, Sealed and delivered in the Presence of
THOS. ROGERS.
JOHN F. HARRIS.

BALTIMORE COUNTY, *sct:*

Be it remembered and it is hereby certified that on the fifteenth day of November in the year of our Lord, eighteen hundred and sixteen, before us the subscribers two Justices of the Peace of the State of Maryland for the County aforesaid personally appeared Samuel Vincent the party grantor named in the foregoing Indenture of bargain and sale, or instrument of writing, and acknowledged the same to be his act and deed. Acknowledged before.

THOS. ROGERS,
JOHN F. HARRIS.

1088 STATE OF MARYLAND,
Baltimore County, sct:

I hereby Certify that Thomas Rogers and John F. Harris, gentlemen before whom the above acknowledgment was made have thereto subscribed their names were at the time of so doing two Justices of the Peace in and for the County aforesaid duly commissioned and sworn.

In Testimony whereof I have hereto set my hand and affixed the seal of my office this third day of December in the year of our Lord one thousand eight hundred and sixteen.

WM. GIBSON,
[SEAL.] *Cl'k Balto. Co'ty Co't.*

STATE OF MARYLAND,
Allegany County, To-wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, do hereby certify that the above and fore-

going deed is a true copy of deed recorded in Liber "I" folio 183 &c., of the Land records of said Allegany County.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court this 12" day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Samuel Vincent To William Lorman. Cert. Copy of Deed. Exhibit Brown No. 13. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1089 EXHIBIT BROWN No. 14.

The following deed was recorded May 8" 1824:

This Indenture made this first day of May in the year of our Lord one thousand eight hundred and twenty four, between William Lorman of the City and County of Baltimore in the State of Maryland of the one part and Robert Oliver of the City of Baltimore aforesaid of the other part, Witnesseth:

That for and in consideration of the sum of two thousand nine hundred and eighty dollars, lawful money of the United States to the said William Lorman in hand well and truly paid by the said Robert Oliver at or before the sealing and delivery of these presents, the receipt whereof the said William Lorman doth hereby acknowledge and confess to be therewith fully satisfaction, contented and paid and thereof and therefrom and of and from every part and parcel thereof, doth release, acquit and forever discharge the said Rober Oliver his heirs, executors and administrators by these presents the said William Lorman hath granted, bargained and sold, aliened, enfeoffed, conveyed by these presents doth grant bargain and sell, alien, enfeoff*ed* and convey unto the said Robert Oliver, his heirs and assigns all those two tracts or parcels of land, situate and lying in Allegany County and State of Maryland aforesaid, the one called The Royal Charlotte and the other called Chance which are contained with the respective metes and bounds, courses and distances following, that is to say: Beginning for the tract called The Royal Charlotte at the eight line of the Manor on the Youghany river containing seventeen thousand seven hundred and fifty acres and running thence North sixty four perches West three hundred and fifty four perches, South twenty Six degrees east eight hundred and eighty two perches and then with a straight line to the place of beginning, Containing Two Thousand acres of land be the
1090 same more or less, And beginning for the tract called Chance at the end of the second line of a tract of land called Mount Pleasant surveyed for Baker Johnson the thirteenth day of April seventeen hundred and seventy four, and running thence South forty nine degrees East one hundred and forty five P. North forty two degrees East five hundred and ninety five perches North forty nine degrees West two hundred and seventy five perches, South forty five degrees West five hundred and ninety two perches and then with a straight line to the place of beginning. Containing nine hundred and eighty acres of land be the same more or less, which said two

tracts of land were granted and conveyed by Samuel Vincent to the said William Lorman, his heirs and assigns in fee by Indenture bearing date on or about the fifteenth day of November in the year of our Lord one thousand eight hundred and sixteen, and recorded among the Land records of Allegany County aforesaid in Liber H. B. No. I folio 183 &c., Together with all and singular the improvements upon the two tracts or parcels of land above described, made or being, and all and every the rights, privileges, appurtenances and advantages to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits of the same and all the estate, right, title, interest use, trust, procession, property claim and demand whatsoever both in law and equity of the said William Lorman of in unto and out of the said described premises, to have and to hold the two tracts and parcels of land and premises above described and hereby conveyed or mentioned or intended hereby so to be with their and every of their appurtenances unto the said Robert Oliver his heirs and assigns, to the only proper use and behoof of the said Robert Oliver his heirs and assigns forever, and the said William Lorman for himself his heirs, Executors and administrators doth covenant,
1091 promise grant and agree to and with the said Robert Oliver his heirs and assigns by these presents in manner following, that is to say that the said William Lorman and his heirs the said two tracts and parcels of land and premises above described and hereby conveyed or mentioned or intended hereby so to be with the appurtenances from and against himself and his heirs and all and every other persons and person legally or equitable claiming or to claim any estate or interest or right or title thereto in any or to any part or parcel thereof through by or under him unto the said Robert Oliver his heirs and assigns shall and will warrant and by these presents forever defend and also that the said William Lorman and his heirs shall and will at any time or times hereafter at the reasonable request and proper cost and charges in the law of the said Robert Oliver his heirs or assigns do make, execute acknowledge and deliver or cause and procure to be done, made, executed and acknowledged all such further and other acts deeds, assurances and conveyances in the law or shall or may by reasonable advise or devised and required by the said Robert Oliver his heirs or assigns or his or their Counsel learned in the law for the better and more perfectly granting, conveying, releasing and assuring unto the said Robert Oliver his heirs and assigns all such estate and interest right title as the said William Lorman hath or at any time heretofore had in or unto the two tracts or parcels of land and premises above described and hereby mentioned and intended to be granted and conveyed according to the purport true intent and meaning of these presents.

In witness whereof the said William Lorman hath hereunto subscribed his name and affixed his seal on the day and year first above written.

WILLIAM LORMAN. [SEAL.]

Signed, Sealed in the presence of
JOHN F. HARRIS.
SAMUEL YOUNG.

1092 Received on the day of the date of the foregoing Indenture from Robert Oliver, the party of the second part hereto, the sum of Two Thousand nine hundred and eighty dollars lawful money full of the consideration within expressed to be paid by him to me.

WM. LORMAN.

Witness:
JOHN F. HARRIS.

STATE OF MARYLAND,
City of Baltimore, sct:

Be it remembered and it is hereby certified that on the first day of May in the year of Our Lord one thousand eight hundred and twenty four, before the subscribers two Justices of the Peace, of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared William Lorman the party of the first part named in the foregoing Indenture or instrument of writing and doth acknowledge the same to be his act and deed, and now at the same time before us also personally appears Mary Lorman wife of the said William Lorman and acknowledges that she doth relinquish and release all her right, title and claim of dower of and in the lands and premises described in the foregoing Deed and thereby mentioned and conveyed to the therein named Robert Oliver, and that the same lands and premises are the right and estate of the said Robert Oliver his heirs and assigns and the said Mary Lorman being by us privately examined apart from and out of the hearing of her husband, whether she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threat of or ill usage by her husband or fear of his displeasure, she declareth and saith that she doth. Witness our names the day and year aforesaid.

JOHN F. HARRIS.
SAM'L YOUNG.

1093 STATE OF MARYLAND,
Baltimore County, sct:

I hereby Certify that John F. Harris and Samuel Young, gentlemen before whom the acknowledgments were made, and who hath subscribed their names, were at the time of so doing, Justices of the peace in and for the City of Baltimore duly commissioned & sworn and to all those acts as such full faith and credit are and ought to be given as well in courts of Justices therein.

In Testimony whereof I have hereto subscribed my name and affixed the seal of Baltimore County this fourth day of May one thousand eight hundred & twenty four.

[SEAL.]

WM. GIBSON,
Clk. Balto. County Ct.

STATE OF MARYLAND,
Allegany County, To-wit:

I, John W. Young, of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing

is a true copy of Deed Recorded in Liber "M" folio 369 &c., one of the Land records of said Allegany County.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court, this 13" day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: William Lorman to Robert Oliver. Cert. Copy of Deed. Exhibit Brown No. 14. Supreme Court U. S. No. 1. Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1094 EXHIBIT BROWN No. 15.

At the request of Charles Oliver this Deed was Recorded January 13" 1834.

This indenture made this tenth day of January in the year of our Lord one Thousand eight hundred and thirty four, Between Robert Oliver of the City and County of Baltimore, in the State of Maryland, of the one part, and Charles Oliver of the same place, son of the said Robert Oliver, Witnesseth:

That for and in consideration of the natural love and affection, which the said Robert Oliver hath for and careth to his said son, and for the further consideration of the sum of One hundred dollars lawful money to the party of the first part, paid by the party of the second part to these presents, at or before the sealing or delivery thereof, the receipt whereof is hereby acknowledged, the said Robert Oliver hath given, granted, bargained and sold, Aliened, Enfeoffed and conveyed, and by these presents doth give, grant, bargain and sell, alien, enfoeff convey unto the said Charles Oliver his heirs and assigns, All that and those tract or tracts of land situated and lying in Allegany County and State of Maryland aforesaid, called "The rights of Man" which was or were granted in Three parts by the State of Maryland, to Benjamin Stoddad by patent bearing date the fourth day of November eighteen hundred and five, and recorded in the Land Office for the Western Shore in Liber I. C. No. S. folio 264 containing in the whole Five Thousand four hundred and fifty one acres, and to which the said Robert Oliver, subsequently acquired a title by purchase and descent from his brother John Oliver, deceased. Also all that tract of land situated and lying in Allegany County Aforesaid called "White Oak Point" containing two thou-

sand and eighty six acres, which was granted by the State of
1095 Maryland to Paul Hoye by patent bearing date the eighteenth day of September, seventeen hundred and ninety nine, and recorded in the Land Office for the Western Shore in Liber I. C. No. M. folio 617, and was by Indenture dated the twelfth day of June One Thousand eight hundred and thirty and recorded among the Land records of Allegany County aforesaid in Liber A. B. No. P. folio 129, granted and conveyed by George Washington Deane to the said Robert Oliver, his heirs and assigns.

Also all that Tract of land situated and lying in Allegany County aforesaid called "The Land Flowing with Milk and Honey" Con-

taining two thousand seven hundred and forty five acres, which was granted by the State of Maryland to Daniel Grant by patent bearing date the eighth day of February, seventeen hundred and ninety one, and recorded in the Land Office for the Western Shore in Liber I. C. No. E folio 642. Also all that tract of land called "Good Hope" Situated *situated* and lying in Allegany County aforesaid (formerly in Washington County) Containing Three hundred and eighty nine acres, which was granted by the State of Maryland to Dennis Grant by patent bearing date the twenty eighth day of December seventeen hundred and eighty five, and recorded in the Land Office for the Western Shore in Liber L. C. No. *a.* folio 590, which last two mentioned tracts of land were conveyed by Daniel Grant above named and James P. Boyd to the said Robert Oliver, his heirs and assigns by Indenture dated the eighth day of February one thousand eight hundred and sixteen and recorded among the Land Records of Allegany County aforesaid in Liber M. Folios 434, &c., Also All those two Tracts of land situated and lying in Allegany County aforesaid, The one called "The Royal Charlotte," containing two thousand acres, and the other called "Chance" Containing nine hundred and eighty acres, which were granted and conveyed by William
1096 Lorman to the said Robert Oliver his heirs and assigns by Indenture bearing date the first day of May in the year of our Lord One thousand eight hundred and twenty four, and recorded among the Land records of Allegany County aforesaid in Liber A. B. No. M folio 369 &c., Also all those six Lots of land situated and lying in Allegany County aforesaid numbered 868, 2561, 2562, 2563, 2564, and 2565, eight hundred and sixty eight, two thousand five hundred and sixty, one two thousand five hundred and sixty two, two thousand five hundred and sixty three, Two thousand five hundred and sixty four, and two thousand five hundred and sixty five, containing each fifty acres, and a tract of Land called "Stewarts Delight" situated and lying in Allegany County aforesaid. Containing two hundred and one acres and three fourths of an acre, which said six lots and said last mentioned tract of land was granted and conveyed by William Armstrong to the said Robert Oliver by indenture dated the twentieth day of February in the year of our Lord one thousand eight hundred and twenty six, and recorded among the land records of Allegany County aforesaid, in Liber A. B. No. N. folios 169 &c., Also all that Tract of land situated and lying in Allegany County aforesaid called "Netherlands" Containing five hundred and forty nine acres and a half, which by patent bearing date of the thirteenth day of March eighteen hundred and twenty nine, and recorded in the Land Office for the Western Shore in Liber G. G. B. No. 1 folio 64, was granted by the State of Maryland to John McHenry, Also all that tract of land situated and lying in Allegany County, aforesaid called "The Range" containing two hundred acres, which was granted by the State of Maryland to John McHenry by patent dated the thirteenth day of March eighteen hundred and twenty nine, and recorded in the Land Office
1097 for the Western Shore in Liber G. G. B. No. 1 folio 63. Also all those two lots of land situated and lying in Allegany

County aforesaid numbered 1066 and 1608 (one thousand and sixty six, and one thousand and sixty eight) Containing fifty acres each, which said two tracts of Land called "Netherlands" and the "Range" and the said lots numbered 1066 & 1068 were granted and conveyed by John McHenry to the said Robert Oliver by Indenture dated the twenty third day of March one thousand eight hundred & twenty nine, and recorded among the Land records of Allegany County aforesaid in Liber A. B. No. Q folio 365 &c., Also all that tract of Land situated and lying in Allegany County aforesaid called "Kindness" Containing two thousand and seventy two acres, which was granted by the State of Maryland to Baker Thomson by patent bearing date the twenty third day of October seventeen hundred and ninety three, and recorded in the Land Office for the Western Shore in Liber I. C. No. H folio 375, and was conveyed by William Ross to the said Robert Oliver by Indenture dated the twentieth day of July one thousand eight hundred and twenty six, and recorded among the Land Records of Allegany County aforesaid in Liber A. B. No. N folio 260 &c. Also all that tract of land situated and lying in Allegany County aforesaid called "Thomas and Ann" Containing two thousand acres, which was granted by the State of Maryland to Thomas Johnson by patent dated the sixth day of December seventeen hundred and eighty six and recorded in the Land Office for the Western Shore in Liber L. C. No. C. folio 6. Also all that tract of land situated and lying in Allegany County aforesaid called "The Promised Land" Containing twelve hundred acres, which two last mentioned tracts of land were conveyed by Joshua Johnson and Thomas I. Graham to the said Robert Oliver by Indenture dated the twentieth day of July one thousand eight hundred and twenty six, and recorded among the Lands Records of Alleghany County aforesaid in Liber A. B. No. N folio 258 &c. Also all that tract of land situated and lying in Allegany County aforesaid called "Hinches Discovery" Containing one thousand acres which was granted and conveyed by Richard Potts to the said Robert Oliver by deed dated the eighteenth day of November eighteen hundred and twenty two, and recorded among the Land records of Allegany County aforesaid in Liber A. B. No. M. folio 22 &c., Also all those tracts and parcels of land situated and lying in Allegany County aforesaid, called and known by the following names, to wit: "Deep Creek Farm" Containing eight hundred and fifty one acres. "Paradise" Containing seven hundred and thirty seven acres and one eighth, and "Cascade" Containing three hundred and sixty five acres and three quarters, which were granted and conveyed by John Hoye to the said Robert Oliver by Indenture bearing date the seventeenth day of October one thousand eight hundred and twenty nine, and recorded among the Land Records of Allegany County aforesaid in Liber A. B. No. O folio 486 &c. Also all that tract of land situated and lying in Allegany County aforesaid called "The Addition to Paradise" Containing fourteen hundred and seventy two acres and one half of an acre, which was granted and conveyed by John Hoye to the said Robert Oliver, by Indenture dated the thirtieth day of July one thousand eight hun-

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dred and thirty and recorded among the Land Records of Allegany County aforesaid in Liber A. B. No. P folio 122 &c., Also those two lots situated and lying in Alleghany County aforesaid numbered 1110 and 1703 (Eleven hundred and ten and seventeen hundred and three) containing fifty acres each, which were by Indenture dated the second day of August eighteen hundred and thirty, and recorded among the Land Records of Allegany County afore-
1099 said in Liber A. B. No. P. folio 124 &c., granted and conveyed by the said John Hoye to the said Robert Oliver, Also all those two several parts of tracts of land situated and lying in Allegany County aforesaid, the one called "Addition" Containing three hundred and twenty two acres and three quarters of an acre, and the other called "All The Chances," Containing seven hundred and five acres & one quarter of an acre which were granted & Conveyed by John Hoye to the said Robert Oliver by Indenture bearing date the twenty seventh day of October eighteen hundred and twenty nine and recorded among the Land Records of Alleghany County aforesaid, in Liber *No.* A. B. No. O folio 519 &c. Also one undivided sixth part of all that tract of land situated and lying in Allegany County aforesaid called "Beattys Plains" containing nine thousand one hundred and thirteen acres, which was granted by the State of Maryland to Lewis Neth and Peregine Fitzhugh by patent bearing date the ninth day of March seventeen hundred and ninety eight and recorded in the Land Office for the Western Shore in Liber I. C. No. M. folio 385, and to which undivided sixth part the said Robert Oliver derived a title under and by virtue of three several deeds of conveyance that is to say, one from Peregine Fitzhugh to John Eager Howard, Nathaniel Ramsey and the said Robert Oliver, dated the Fifteenth day of September one thousand eight hundred and three and recorded among the Land records of Allegany County aforesaid in Liber I. L. No. D folio 61 &c., one other from John McHenry and Martha his wife to the said Robert Oliver dated the fourteenth day of February one thousand eight hundred and twenty nine and recorded among the Land Records of Allegany County aforesaid in Liber A. B. No. O folio 363 &c., and the other one of them from Sophia McHenry to the said Robert Oliver dated the thirteenth day of November eighteen hundred and twenty nine
1100 and recorded among the Land records of Allegany County aforesaid in Liber A. B. No. P, folio 3 &c., Also two undivided third Parts of and in all that tract of land situated & lying in Allegany County aforesaid called "Republic" containing eight thousand three hundred and seventy three acres, which was granted by the State of Maryland to Benjamin Stoddard by Patent dated the fifth day of September seventeen hundred and ninety six, and recorded in the Land Office for the Western Shore in Liber I. C. No. L folio 152 and to which said two undivided third parts the said Robert Oliver became entitled by purchase and by descent from his brother John Oliver, deceased, Also the undivided share and interest of the said Robert Oliver of and in all that tract of land situated and lying in Allegany County aforesaid called "The Pink of Allegany" containing three thousand five hundred and nineteen acres, which was

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granted by the State of Maryland to Benjamin Stoddard by patent bearing date the tenth day of November eighteen hundred and one, and recorded in the Land Office for the Western Shore in Liber I. C. No. 1 folio 676. Also all the share Estate and interest of the said Robert Oliver of and in all that tract of land situated and lying in Allegany County aforesaid, called "Park" Containing four thousand five hundred and fifty two acres, which was granted by the State of Maryland to Benjamin Stoddard by patent dated the twenty sixth day of May seventeen hundred and ninety five and recorded in the Land office for the Western Shore in Liber I. C. No. G. folio 547. Also the undivided share estate and interest of the said Robert Oliver of and in all that tract of land situated and lying in Allegany County aforesaid called "Carmel," containing three hundred and forty one acres, which was granted by the State of Maryland to Benjamin Stoddard by patent bearing date the Ninth day of February
1101 Seventeen hundred and eighty six and recorded in the Land Office for the Western Shore in Liber I. C. No. A. folio 633. Also all the estate and interest of the said Robert Oliver in all those five Lots of land situated and lying in Allegany County aforesaid, Numbered 3882, 3883, 3884, 3885 and 3886 Three thousand eight hundred and eighty two, three thousand eight hundred and eight-three, three thousand eight hundred and eighty four, three thousand eight hundred and eighty five, and three thousand eight hundred and eighty six) Containing fifty acres each, which were granted by the State of Maryland to Benjamin Stoddard by patent bearing date the twentieth day of March Seventeen hundred and ninety five and recorded in the Land Office for the Western Shore in Liber I. C. No. H folio 648. Also two undivided third parts of an- in all those two lots of land situated and lying in Allegany County aforesaid, numbered 2018 and 2019 (two thousand and eighteen and two thousand and nineteen) containing fifty acres each, which were conveyed by John Oliver to Robert Oliver above named John Oliver now deceased and James McHenry as tenants in common by Indenture dated the ninth day of November one thousand eight hundred & ten, and recorded among the Land records of Allegany County aforesaid in Liber I. L. No. F folio 150 &c., and to which said John Oliver one third part thereof the said Robert Oliver became entitled as his heir at law. Also all those Lots of land situated and lying in Allegany County aforesaid which are distinguished by the numbers 2355, 2356, 2357, 2358, 2611, 2612, 2613 & 2614. (Two thousand three *thousand* and fifty five, two thousand three hundred and fifty six, two thousand three hundred and fifty seven, two thousand three hundred and fifty eight, two thousand six hundred and eleven, two thousand six hundred and twelve, two thousand six hundred and thirteen and two thousand six hundred and fourteen) which
1102 were together with parts of the aforesaid tracts of land called "Park" and "The Rights of Man" conveyed by John J. Donaldson, Trustee, to the said Robert Oliver by Indenture dated the tenth day of July one thousand eight hundred and thirty two, and recorded among the Land Records of Allegany County aforesaid in Liber A. B. No. 2 folio 85 &c., Also one undivided moiety of half part of all that Tract of land situated and lying in Allegany County

aforesaid called "Latest Worth" containing ten thousand and seven hundred and sixty one acres and six eighths of an acre, which was granted by the State of Maryland to Robert Oliver above named and James Cunningham by patent bearing date the second day of August eighteen hundred and thirty, and recorded in the Land Office for the Western Shore in Liber G. G. & B. No. 1 folio 213. Also one undivided moiety or half part of all that tract of land situated and lying in Allegany County aforesaid called "Emancipation," Containing seven thousand one hundred and thirty seven acres and one eighth, which was granted by the State of Maryland to the said Robert Oliver and James Cunningham by Patent dated the fourth day of August eighteen hundred and thirty, and recorded in the Land Office for the Western Shore in Liber G G B No. 1 folio 218. Also one undivided moiety or half part of all that tract of land situated in Allegany County aforesaid, called "Glen Eyry" containing four thousand six hundred and twenty four acres, which was *was* granted by the State of Maryland to the said Robert Oliver and James Cunningham by patent dated the sixth day of August eighteen hundred and thirty and recorded in the Land Office for the Western Shore in Liber G. G. B. No. 1 folio 224. Also one undivided Moiety of half part of all that tract of land situated and lying in Allegany County aforesaid called "Muddy Creek" containing five hundred and sixty five acres and one eighth of an acre, which was granted
1103 by the State of Maryland to the said Robert Oliver and James Cunningham by patent dated the seventh day of August eighteen hundred and thirty and recorded in the Land Office for the Western Shore in Liber G*a* G. B. No. one folio 227. Also one undivided moiety or half part of all that tract situated and lying in Allegany County aforesaid, called "Lochiel" containing Six thousand two hundred and forty five acres and a quarter, which by patent bearing date the eighth day of August eighteen hundred and thirty and recorded in the Land Office for the Western Shore in Liber G. G. B. No. 1 folio 228 and granted by the State of Maryland to the said Robert Oliver and James Cunningham. Also one undivided moiety or half part of all that tract of land situated and lying in Allegany County aforesaid called "Fanlie Park" containing six hundred and seven acres and five eighths of an acre, granted by the State of Maryland to the said James Cunningham & Robert Oliver, by patent dated the eighth day of May eighteen hundred and thirty two, and recorded in the Land Office for the Western Shore in Liber G. G. B. No. 1 folio 365. Also one undivided moiety or half part of that tract of land situated and lying in Allegany County aforesaid called "Common Sense" containing one thousand two hundred and seventy nine acres, which was granted by the State of Maryland to the said James Cunningham and Robert Oliver by patent dated the ninth day of May eighteen hundred and thirty two, and recorded in the Land Office for the Western Shore in Liber G. G. B. No. 1 folio 36 &c. And also all other the lands, lots of ground and real estate lying and being in Allegany County aforesaid, of or belonging to the said Robert Oliver or to which he *has* in anywise legally or Equitably entitled in possession or otherwise, whether held or claimed

by him individually or jointly or in connection with any
1104 other person or persons whomsoever. Together with all and singular the buildings and improvements thereupon erected made or being, and all and every the rights, privileges, appurtenances and advantages to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate and interest, right, title, use, trust, possession, property claim and demand whatsoever of the said Robert Oliv-r, in unto and out of the same. To have and to hold all and singular the lands, lots and Real Estate and Property hereby granted and conveyed, or mentioned or meant and intended hereby so to be, with the appurtenances, unto the said Charles Oliver, his heirs and assigns, to the proper use and behoof of the said Charles Oliver, his heirs and assigns, forever, and the said Robert Oliver for himself his heirs, executors and administrators, doth hereby covenant promise and agree to and with the said Charles Oliver his heirs and assigns, that the said Robert Oliver and his heirs shall and will, at any time or times hereafter at the reasonable request and proper cost and charge in the law of the said Charles Oliver, his heirs or assigns, do, make, execute acknowledge and deliver, and cause and procure to be done, made executed, acknowledged and delivered unto the said Charles Oliver his heirs and assigns all such further and other acts and deeds, assurances and conveyances in the law as shall or may be reasonably advised or devised and required by the said Charles Oliver his heirs or assigns, or his or their Counsel learned in the law, for the confirmation of these presents, according to the purport, true intent and meaning hereof, provided always, that nothing herein contained or anything to be contained in any future or confirmatory deed, shall be construed as granting or warranting any other or greater estate, right, title or interest that the said Robert
1105 Oliver now has and holds, or is entitled to, in the lands and premises aforesaid. The true intent and meaning of these presents being to grant and convey to the party hereto of the second part his heirs and assigns all such right, title and interest and claim as the party of the first part has and holds, or is entitled to, in the lands and premises above described or named, or in all or any other lands or real estate situated and lying in Allegany County aforesaid, and no other estate, right or title whatsoever.

In witness whereof the said Robert Oliver hath hereunto subscribed his name and affixed his seal the day and year first herein before written. ROBERT OLIVER. [SEAL.]

Signed, Sealed and Delivered in Presence of
SAML. PURVIANCE.
JAS. WALSH.

Received of the day of the date of the foregoing, Indenture, from Charles Oliver the party of the second part thereto, the sum of One Hundred Dollars, lawful money the consideration within expressed to be paid by him to me.

ROBERT OLIVER.

Witness:
SAML. PURVIANCE.

STATE OF MARYLAND,
City of Baltimore, set:

Be it remembered and it is hereby certified that on this Tenth day of January in the year of our Lord one thousand eight hundred and thirty four before the subscriber two Justices of the Peace of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Robert Oliver, he being known to us to be the person who is named and described as and professing to be the party to the foregoing deed or Intenture, and doth acknowledge the said Indenture or instrument of writing to be his act and deed.

In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

SAML. PURVIANCE.
JAS. WALSH.

1106 STATE OF MARYLAND,
Baltimore County, set:

I hereby Certify that Jacob Walsh and Samuel Purviance, gentlemen before whom the foregoing acknowledgment was made and who have hereto subscribed their names, were at the time of so doing, Justices of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified.

In Testimony Whereof I have hereunto subscribed my name and affixed the Seal of Baltimore County Court on this tenth day of January one thousand eight hundred and thirty four.

[SEAL.] THOS. KELE,
Cl'k of Balto. Co'ty Co't.

STATE OF MARYLAND,
Allegany County, to-wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing is a true copy of deed Recorded in Liber Q. Folio 533 &c. one of the Land records of said Allegany County.

In Testimony Whereof I Hereto subscribe my name and affix the seal of said Circuit Court this 13" day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

[Endorsed:] Robert Oliver To Charles Oliver. Cert. Copy of Deed. Exhibit Brown No. 15. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1107 EXHIBIT BROWN No. 16.

Thomas Johnson, Esq., His Patent, "The Promised Land", 1200 acres.

THE STATE OF MARYLAND, &C.:

Know Ye that Whereas James Brooks on the eleventh day of April seventeen hundred and seventy four had surveyed and laid out for him a tract or parcel of land called "The Promised Land",

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lying and being then in Frederick now in Washington County and containing twelve hundred acres, by virtue of so much part of a Special Warrant for six thousand acres, granted him out of the Proprietarys Land Office the twenty fifth day of March seventeen hundred and seventy four, according to the Conditions of Plantation then in force as appears:

That the said James Brooks by an assignment dated the ninth day of July seventeen hundred and seventy four, made over all his right, title and interest of in and to the Cert. of the said land, unto John Clapham, who in like manner by an assignment dated the twenty ninth day of September seventeen hundred and seventy eight, made over all his right, title and interest of in and to the same Certificate unto Thomas Johnson, Esquire, who hath since pursuant to Act of Assembly paid the Treasurer of the Western Shore the sum of seven shillings and six pence Current money for some improvements on the said land, and the right of the Proprietary being now vested in the State of Maryland.

The said State doth hereby Grant unto him the said Thomas Johnson Esq., all that the aforesaid tract or parcel of Land called "The Promised Land," lying in Washington County.

1108 Beginning at two bounded White oaks and a bounded Black oak standing on the East side of a hill, at the head of one of the forks of Dunkards Glade about South, eighty six degrees West, four hundred and seventy perches from where Daniel Hall formerly lived on the Dunkard Glade on the West side of the Great Youghyougany River, and about South, fifty six degrees West, nine hundred perches from the mouth of Murley's Run which empties into the West side of the aforesaid River, and running thence North, forty perches; West, two hundred and fifty three perches; South, four hundred perches; East, four hundred and eighty perches; North, four hundred perches; West, two hundred and twenty seven perches; then with a straight line to the beginning.

Containing twelve hundred acres, according to the Certificate of Survey thereof, taken and returned into the Land Office, bearing date the eleventh day of April seventeen hundred and seventy four, and there remaining; Together with all rights, profits, benefits and privileges and thereunto belonging. To Have and To Hold the same unto him the said Thomas Johnson, Esquire, his heirs and assigns forever:—

Given under the Great Seal of the State of Maryland, this sixth day of December seventeen hundred and eighty six.

Witness the Honorable John Rogers Esquire, Chancellor.

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

1109 LAND OFFICE OF MARYLAND, *sct:*

I hereby certify, that the aforegoing is a true copy of the Patent for "The Promised Land", 1200 acres, as recorded in Liber I. C. No. C. folio 7. one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed

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the Seal of the Land Office of Maryland, this 16th day of June, eighteen hundred and ninety seven.

[Seal of the Land Office of Maryland.]

WM. O. MITCHELL,
Commissioner of the Land Office.

Endorsed: Copy Patent, "The Promised Land" 1200 acres. Exhibit Brown No. 16. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907. Cost, $1.15.

1110 EXHIBIT BROWN NO. 17.

Thomas Johnson, Esquire, His Patent, "Thomas and Ann," 2000 Acres.

THE STATE OF MARYLAND:

Know Ye that Whereas Thomas Johnson Esquire of Frederick County (late Thomas Johnson Junior Esquire of the City of Annapolis) had surveyed for him a tract or parcel of land called "Thomas and Ann", lying then in Frederick now in Washington County containing two thousand acres, by virtue of a special Warrant for that quantity granted him out of the Proprietary's Land Office, the twenty fifth day of March seventeen hundred and seventy four, according to the Conditions of Plantation then in force as appears: and the right of the Proprietary being now vested in the State of Maryland.

The said State doth hereby Grant unto him the said T-omas Johnson, Esquire, all that the aforesaid tract or parcel of land called "Thomas and Ann", lying in Washington County.

Beginning at four bounded white oaks standing on the West side of McCullock's Road in a large glade commonly called and known by the name of Murley's Glade, which said white oaks stand about North, thirty three and a half degrees West, one thousand and ninety five perches from the mouth of the Little Youghyougany, it being the beginning of Lord Baltimore's Manor on the great glades containing seventeen thousand seven hundred and fifty acres, and running thence North, eighty five degrees West, one hundred and twenty perches; North, twenty seven degrees West, eighty five perches; South, twenty eight degrees West, six hundred and one perches; South, eighty two degrees West, one hundred and sixty nine perches; South, twelve and a half degrees West, two hundred and seventeen perches; South, seventy six degrees East, three hundred and twenty perches; North, three hundred and two perches;
1111 East, four hundred and eighty perches; North, eighteen and a half degrees East, four hundred and forty seven perches, then a straight line to the beginning.

Containing and now laid out for two thousand acres, according to the Certificate of Survey thereof taken and returned into the land Office bearing date the ninth day of April seventeen hundred and

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seventy four, and there remaining: Together with all right profits, benefits and privileges thereunto belonging To have and To Hold the same unto him the said Thomas Johnson, Esquire, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this sixth day of December seventeen hundred and eighty six.

Witness the Honorable John Rogers, Esq., Chancellor.

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the foregoing is a true copy of the Patent for "Thomas and Ann," 2000 acres, as recorded in Liber I. C. No. C, folio 6 &c, one of the record Books of this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 16" day of June eighteen hundred and ninety-seven.

[SEAL.] (Signed) WM. O. MITCHELL,
Commissioner of the Land Office.

1112 (Endorsed:) Copy Patent, "Thomas and Ann", 2000 acr. Exhibit Brown No. 17. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907. Cost $1.05.

1113 EXHIBIT BROWN No. 18.

I Thomas Johnson near Frederick Town in Frederick County in the State of Maryland, being of sound disposing mind do make and ordain this my last will and testament, in manner following to-wit:

I give and devise to my daughter Rebecca Johnson widow of Thomas James Johnson my undivided moiety of all the land lying in Loudon County in the Commonwealth of Virginia, being I believe about Thirteen Hundred Acres with the appurtenances and privileges thereunto belonging which said Land I held as tenant in common or joint tenant with the said Thomas James Johnson in his lifetime.

I give and devise to my son Joshua Johnson his heirs and assigns forever the one undivided half part of all the residue of my real estate whatsoever and wheresoever.

I give and devise to my grand son Thomas I Grahame, and to his heirs on the part of his mother the other undivided half part of all my real estate whatsoever and wheresoever not hereinbefore devised to my daughter Rebecca Johnson.

I hereby constitute and appoint my soninlaw John Grahame, my son Joshua Johnson and my grand son Thomas I. Grahame Executors of this my last will and testament.

TH: JOHNSON. [SEAL.]

Signed, sealed, published and declared as and for his last will and testament by Thomas Johnson the above named testator, in our

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presence, who at his request and in his presence, and in the presence of each other have subscribed our names as witnesses thereto.
July 4th, 1818.

R. B. TANNEY.
F. W. HATCH.
ASENATH HARWOOD.

1114 FREDERICK COUNTY, *To-wit:*

On the 28th day of December 1819 there came John Grahame and made oath on the Holy Evangely of Almighty God that the foregoing instrument of writing is the true whole will and testament of Thomas Johnson, late of Frederick County, deceased, that hath come to his hands and possession, and that he doth not know of any other.—of younger date.

HENRY STEINER, *Regr.*

FREDERICK COUNTY, *To-wit:*

On the 28th day of December 1819, then came Roger B. Tanney and Asenath Harwood, two of the subscribing witnesses to the aforegoing last will and testament of Thomas Johnson late of Frederick County deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator therein named sign and seal this will that they heard him publish pronounce and declare the same to be his last will and testament, that at the time of his so doing; he was to the best of their apprehensions of a sound and disposing mind, memory and understanding and that they together with Frederick W. Hatch, the other subscribing witness respectively subscribed their names as witnesses to this will, in the presence, and at the request of the testator and all in the presence of each other.

HENRY STEINER, *Regr.*

4½ sides.

STATE OF MARYLAND,
Frederick County, To-wit:

I hereby certify that the foregoing is a true copy of the last will and testament of Thomas Johnson late of Frederick County
1115 Maryland, deceased, as recorded in Liber H. S. No. 2 folio 312 &c., one of the Will records in the office of the Register of Wills for Frederick County, Maryland.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Orphans' Court of said County, this 12th day of July, A. D. 1907.

Test:

[SEAL.] WM. B. CUTSHALL,
Register of Wills for Frederick County, Maryland,

STATE OF MARYLAND,
Frederick County, sct:

I Russell E. Lighter Presiding Judge of the Orphans' Court of Frederick County, Maryland, do hereby certify, that Wm. B. Cutshall is Register of Wills for Frederick County aforesaid; that the aforegoing attestation of his as Register is in due form of law and by the proper officer, and that all due faith and credit ought to be given to his attestation as Register of Wills.

In Testimony Whereof I hereunto set my hand and affix the Seal of the Orphans' Court of Frederick County, this 12th day of July, A. D. 1907.

[SEAL.] RUSSELL E. LIGHTER,
Chief Judge.

STATE OF MARYLAND,
Frederick County, sct:

I Wm. B. Cutshall Register of Wills for Frederick County aforesaid, do hereby certify that Russell E. Lighter is Chief Judge of the Orphans' Court of Frederick County, Maryland, and qualified according to law.

1116 In testimony whereof I hereunto set my hand and affix the Seal of the Orphans' Court this 12th day of July, A. D. 1907.

[SEAL.] WM. B. CUTSHALL,
Register of Wills for Frederick County, Maryland.

(Endorsed:) Certified Copy of Will of Thomas Johnson Deceased. John Grahame, Joshua Johnson, Thomas I. Grahame, Execut. Filed Dec. 28th, 1819. Recorded in Liber H. S. No. 2 Folio 312 one of the Books for Recording Wills in the Office of the Register of Wills for Frederick County, Maryland. Test: Wm. B. Cutshall. Register of Wills. Exhibit Brown No. 18. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia Filed Oct. 15, 1907.

1117 EXHIBIT BROWN No. 19.

The following Deed was Recorded August 21, 1826.

This indenture, made this twentieth day of July in the year one Thousand eight hundred and twenty six, between Joshua Johnson and Thomas I. Grahame, Devisers of the late Thomas Johnson, Esquire of the one part, and Robert Oliver of the City of Baltimore in the State of Maryland of the other part, Witnesseth:

That the said Joshua Johnson and Thomas J. Grahame for and in consideration of Four Thousand eight hundred dollars current money, to them in hand paid, before the sealing and delivery of these presents, the receipt whereof they the said Joshua Johnson and Thomas J. Grahame do hereby acknowledge, have granted, bargained and sold, aliened, released, enfeoffed and confirmed, and by these presents do grant, bargain, sell, alien, release, enfeoff and confirm unto him the said Robert Oliver, his heirs and assigns forever. All that Tract or parcel of land called "The Promised Land, lying

now in Allegany County in the State of Maryland, Containing twelve hundred acres of land according to the Patent granted to the said Thomas Johnson, bearing date the sixth day of December seventeen hundred and eighty six, and recorded in Liber I. C. No. C folio 7 for the courses of which said land the said Joshua Johnson and Thomas J. Grahame refer, and by these presents convey the said tract called The Promised Land by the courses mentioned in the said patent as fully and to the same extent as if they were described in these presents, and also all that other tract called "Thomas and Ann" lying in Allegany County in the State of Maryland containing according to the courses mentioned in the patent granted to the said Thomas Johnson on the sixth of December seventeen hundred and eighty six, and recorded in Liber J. C. No. C folio 6) two thousand acres of land, and the said Joshua Johnson and Thomas J. Grahame
1118 do hereby convey to the said Robert Oliver the said Tract called "Thomas and Ann" by the courses mentioned in the said patent as fully and to the same extent as if the Courses mentioned in the said Patent were inserted in these presents. The said two above mentioned tracts or parcels of land are the said two tracts patented to the said Thomas Johnson, as by a reference to the said patents will more and at large appear, and the said two tracts or parcels of land were among other things devised by the said Thomas Johnson to the said Joshua Johnson and Thomas J. Grahame as by the Will of the said Thomas Johnson, reference thereto being had bearing date the 4th July eighteen hundred and eighteen and recorded in Liber H. S. No. 2 one of the Record Books of Wills in the office of Register of Wills of Frederick County in the State of Maryland, will more fully and at large appear. Together with the rights, members and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatever legal and Equitable of the said Joshua Johnson and Thomas J. Grahame in and to the said two tracts or parcels of land and premises, hereby bargained and sold, with the rights, members and appurtenances, and every or any part and parcel thereof. To have and to hold the said two tracts or parcels of land and premises hereby bargained and sold, or mentioned or intended hereby so to be, and every and any part and parcel thereof, with the rights, members and appurtenances unto the said Robert Oliver, his heirs and assigns forever to the only proper use and benefit and behoof of him the said Robert Oliver, his heirs and assigns forever, and to and for no other use, intent or purpose whatever, And the said Joshua Johnson and Thomas J. Grahame for themselves, their heirs, executors and administrators do
1119 covenant, grant, promise and agree to and with the said Robert Oliver his heirs, executors and administrators and assigns that they the said Joshua & Thomas and their Heirs the said two tracts or parcels of land and premises hereby bargained and sold, and every part and parcel thereof, with the rights, members and appurtenances to him the said Robert Oliver and his heirs and assigns against the said Joshua Johnson & Thomas J. Graham and their

heirs and against every person and all persons whatever now claiming or who hereafter may claim any right, title, or interest in or to the same or any part thereof by from or under him or them, shall and will hereafter warrant and forever defend by these presents. And the said Joshua Johnson and Thomas J. Graham for themselves and their heirs, executors and administrators do covenant grant promise and agree to and with the said Robert Oliver and his heirs, executors, administrators and assigns that they the said Joshua & Thomas and their heirs, shall and will at any time and at all times hereafter make execute and acknowledge any other deed or deeds or any other instrument or instruments of writing, for the better assurance and more certain and effectual conveyance of the said two tracts or parcels of land and premises hereby bargained and sold and every part or parcel thereof, with the rights, members and appurtenances to the said Robert Oliver his heirs and assigns.

In Testimony Whereof the said Joshua Johnson and Thomas J. Graham have hereunto set their hands and seals on the day and year first herein before written.

THOMAS J. GRAHAME.
JOSHUA JOHNSON.

Signed Sealed and Delivered in the Presence of
GEORGE ROHR.
JNO. L. HARDING.

MARYLAND, *Frederick County, To-wit:*

Be it remembered that on this day the twentieth of July, in the year one thousand eight hundred and twenty six, personally
1120 appeared Joshua Johnson and Thomas J. Grahame, the grantors named in the foregoing deed or instrument of Writing, and do acknowledge the same to be their act and deed and the two tracts of land and premises therein mentioned and every part and parcel thereof, with the rights, members and appurtenances to be the right, title and estate of Robert Oliver, the grantee also therein named & his heirs and assigns forever according to the true intent and meaning thereof, and the Acts of Assembly in such cases made and provided. Before two Justices of the Peace in and for the County and state aforesaid, and at the same time appeared before us, the said two Justices of the Peace in and for the County and State aforesaid, Caroline Grahame wife of the said Thomas J. Grahame and acknowledged the aforegoing deed or instrument of writing to be her act and deed and the two tracts of land and premises therein mentioned and every part and parcel thereof with the rights, members and appurtenances, to be the right, title and estate of Robert Oliver the grantee therein named and his heirs and assigns forever, and the said Caroline Grahame being by us privately examined apart from and out of the hearing of her husband "Whether she doth make her acknowledgment of the same willingly and Freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure, acknowledged and declared

that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband, or fear of his displeasure.

Taken & Certified before us the day and year above written.

Before

GEORGE ROHR,
JNO. L. HARDING.

MARYLAND, *Frederick County, sct:*

I hereby certify that John L. Harding & George Rohr Gentlemen
before whom the foregoing acknowledgment appears to have
1121 been made & whose names are thereto subscribed, were at the
time of so doing Justices of the Peace in and for the County aforesaid, duly commissioned and sworn.

In Testimony whereof I have hereunto subscribed my name & affixed the Seal of my Office this 20″ July, 1826.

[SEAL.] JOHN SCHLEY, *Cl'k.*

STATE OF MARYLAND,
Allegany County, To-wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing is a true copy of Deed recorded in Liber N. Folio 258 &c. one of the Land records of said Allegany County.

In Testimony Whereof I Hereto subscribe my name, and affix the seal of said Circuit Court this 13″ day of July A. D. 1907.

[Seal of Allegany County, State of Maryland.]

J. W. YOUNG, *Clerk.*

Endorsed: Joshua Johnson and T. J. Grahame To Robert Oliver. Cert. Copy of Deed. Exhibit Brown No. 19. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1122 EXHIBIT BROWN No. 20.

Baker Johnson, Esquire, His Patent, "Kindness," 2072 Acres.

THE STATE OF MARYLAND, *sct:*

Know Ye that Whereas Baker Johnson, Esquire, of Frederick County had surveyed and laid out for him a tract or parcel of land called "Kindness," lying formerly in Frederick but now in Allegany County containing two thousand and seventy-two acres by virtue of nineteen hundred acres part of a special warrant for six thousand acres granted him out of the late proprietarys Land Office according to the conditions of plantation the twenty-second day of April seventeen hundred and seventy-four as appears:—And the said Baker Johnson, Esq., having pursuant to law, paid to the Treasurer

of the Western Shore the sum of sixty-four pounds ten shillings current money caution for the one hundred and seventy-two acres included in the said Survey over and above the part of a warrant aforesaid—And the right of the proprietary being now vested in the State of Maryland,

The said State doth hereby grant unto him the said Baker Johnson, Esq., the said tract or parcel of land called "Kindness," lying in Allegany County aforesaid,—

Beginning at the end of the third line of "The Promised Land," and at or near a bounded maple and wild cherry tree, and running thence north ninety-eight perches; North, seventy-six degrees west, one hundred and sixty perches; South, four hundred and seven perches; South, twenty-nine degrees East, three hundred and nineteen perches; South, sixty-five degrees East, eighty perches; North, fifty-six degrees East, one hundred and thirty-seven perches; North seventy degrees East, two hundred and fifty perches; North, thirty-seven degrees East, two hundred and fifty-four perches; North, thirty-seven degrees West, two hundred and forty-eight perches; thence with a straight line to the beginning—

Containing two thousand and seventy-two acres, according to the certificate of Survey thereof, taken and returned into the Land Office bearing date the thirtieth day of April, seventeen hundred and seventy-four and there remaining: Together with all
1123 rights, profits, benefits and privileges thereunto belonging—to have and to hold the same unto him the said Baker Johnson, Esq., his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this twenty-third day of October, seventeen hundred and ninety-three.

Witness The Honorable Alexander Contee Hanson, Esquire, Chancellor.

THO. S. LEE. [THE GREAT SEAL.] A. C. HANSON, *Chan'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the aforegoing is a true copy of the Patent for "Kindness," 2072 Acres, as recorded in Liber I. C. No. H, folio 375 &c., one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 22d day of June, eighteen hundred and ninety seven.

[SEAL.] WM. O. MITCHELL,
Commissioner of the Land Office.

Endorsed: Copy Patent "Kindness," 2072 acres. Exhibit Brown No. 20. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907. Cost $1.10.

1124 EXHIBIT BROWN No. 21.

In the name of God Amen—I Baker Johnson of Fred'k Town being of sound mind memory and understanding and being desirous of settling my worldly affairs before it shall please God to

remove me, I do therefore make this my last Will and Testament in manner and form following: First I commit my soul to our blessed Father in Heaven and my body to be decently buried and after my just debts and funeral charges are paid I devise and bequeath as follows:

I give and devise to my son Baker Johnson in fee simple that part of my lands where he now lives which has been resurveyed by the name of Auburn which includes John's Mountain part of the resurvey on Bonnett resolution and other lands "Except the old saw-mill seat for my son William Johnson containing one and three quarter acres" which is taken out of the resurvey on Bonnett resolution and which I have had laid off, it begins at a marked Hickory Tree and a stone planted by it at the end of the tenth line of the tract called Auburn, run from thence North forty nine West twenty five perches to a stone then North nine degrees East twenty eight perches to a stone planted at the end of the eleventh line of Auburn with the right and privilege of carrying the water from below the Mills at Baker's its old course to *to* the old saw mill seat then continue the divisional line between Baker and William to the end of the twelfth line of Auburn and then from that a straight line to the last end of the fortieth line of Auburn so that Baker is to have all that part of Auburn that lays to the west of the divisional line here described with the right and privilege of all the water for his Mills as it now runs from the furnace—I also give and devise to my said son Baker in fee simple the Woodland lot of ground No. one containing two hundred and twenty acres, which I have had laid off beginning at a stone at the beginning of Johns Mountain then run to a stone at the beginning of Goodwill then run west one hundred and thirty six perches to a stone planted by the side of the old Cole road then south thirty two degrees west two hundred and four perches to a stone planted by the side of the same Cole road near the top of the Mountain then run easterly two hundred perches to a stone at the end of the twelfth line of a late resurvey of James Johnson's called Springfields then reverse the twelfth line ap S 82 E. 58 Ps. then N. 6. E. 5. Perches to the end of the first line of John's Mountain and then by a straight line to the beginning. I also give and devise to my son Baker the Negro slaves following—with their future increase, Viz, Big Dick, Jany his daughter and Will her son Old Jack and Magdeline his wife Sal & Joe their children, Clowe, Yellow Bill, Resey & Clocy his wife Elsey & Jack son of Sook I also give and devise to Baker all the household furniture at Auburn as his portion. Item, I give and devise to my son William Johnson in fee simple all the other part of the tract of land called Auburn that lays easterly of the divisional line as I have fixed between Baker and him and also that part of all I can get that was left out of Auburn, also the old saw mill seat as excepted and described in my devise to my son Baker also part of the land I bought at the sale of Elias Lefavours estate, beginning for this part at the same Hickory tree and stone that the saw mill seat does and then run North sixty degrees east until it intersects the tract of land called Auburn so as to include for William the Northern part—containing

1125

— Acres I also give and devise to my son William the tract of land called Long discovered containing twenty acres also the two hundred and fifty acres part of the first dividend which had been laid off for Jacob Christ but now belongs to me tho not yet conveyed to me—I also expressly reserve for and devise to my son William and his heirs and assigns the right and privilege of taking water out of the creek near his old saw mill seat for the use of his farm stock and to fix on and identify the quantity of water he may raise a dam as high as necessary confine the water under a six inch head and run it through an inch and a half auger hole and carry or conduct the water over or through any part of the land that Elias Lefavour lived on all and every part of the lands mentioned and devised to him or to him in fee simple—I also give and devise to my son William the following Negro Slaves and their future increase, Viz, Fann Sam and Sue his wife, Cate, Ally and Rose their children Manuel and Mill, Bill (Polls sons) Wally, Farm Jacob, Old Will and Easter his wife—

1126 Item I give and devise to my beloved wife Catharine Johnson during her natural life the use of the house and lots where we now live with the use of the whole of the furniture also the use of the new brick building next the market house containing the store and the other parts now rented Messrs Adams & Waggoner also the use of my farm and the Mills adjoining Monococy also Mt Airy farm and the Vineyard farm from the use and profit of all this propeerty she is to support maintain educate all my six little children that require each to live with her and to have this as their homes—until married, Mrs. Johnson will not suffer any timber or wood to be wasted or sold—. I also give and devise to my beloved wife the following negroes and their future increase Viz, Tobey & Fannie his wife, Sue Larkins, Ben, (Waiter) Bill (Waiter) Sam, Puss and Harriet her daughter Mrs. Johnson is also to have the use of all the Negroes devised to each of my six youngest children until they each arrive to their age or get married the Charriot and pair of horses after the death of my beloved wife, I devise and divide as follows—

Item, I give and devise to my son Worthington Johnson in fee simple the following property to-wit the house and part of the lots where we now live the lots to be divided between my son Worthington & Charles from Market Street to run with the brick wall under the wood house and to, be extended in a straight direction to Mr. Bealls lot I also give and devise to my said son Worthington my farm adjoining Monococy with the Mills &c also the lot of land I bought of Gardner and the lot of ground I bought of Mr. Hanops representatives and also my clover lot of ground as it is now fenced in and which fronts on East street and joins Bookey's lot all and every part of those lands I devise in fee simple to him I also give and devise my son Worthington the following Negroes and their future increase, Viz, Mill, Dick, Tom Beatty & Jim (Jany's children) Elias, Phill, Big Harry & Poll his wife—

Item, I give and devise to my son Charles Worthington Johnson in fee simple the three story brick building next the Market house part of which is occupied by Mr. and Mrs. Ross and part by Messrs.

Adams & Waggoner with the remaining part of my lots
1127 adjoining it the lots to be divided between Worthington &
Charles as is described in my devise to Worthington, I also give and devise to my said son Charles in fee simple my Mt. Airy farm and my Vineyard farm with all the land belonging to them also the lot of ground adjoining Worthington clover lot Bekey's and Zeallors land and fronts on the road which leads to my Mills —I also give and devise to my son Charles the following Negroes and their future increase, Viz, Bill Harry & Mingo sons of Sook at the Vineyard Nanny Jany's daughter Collier Sam Little Bill Humbert & Hanson Brook (Priss son)

Item I give and devise to my daughter Catharine Ross in fee simple the lot of land opposite Zellers barn containing nine acres also lot No 6 adjoining Washington and fronting South Street also the use of that part of the house where she now lives and occupies until my son Charles arrives to the age of twenty one years I also give and devise to my said daughter Catharine Ross the following Negroes Slaves and their future increase Viz, Nell & Frederick her son Waggoner Henry Poll's son and Milie his wife and Ann Jane their daughter Parris Beatty (daughter of Magdeline) Charlot (daughter of Janey)

Item I give and devise to my daughter Julianna E. W. Johnson the following negroes and their future increase Viz, Jane & Marry (her daughter) Starvey the wagoner Marich (Priss daughter) Lewis & Romio (Poll's sons) and Mettle—

Item I give and devise to my daughter Matilda C. Johnson the following negroes and their future increase Viz, Liddy, Bettie & Serena (her daughters Marry living at Bakers) Hettie (Priss's daughter) George (Sooks son) and Big Bill Humbert.

Item I give and devise to my daughter Caroline W. C. Johnson the following negroe slaves and their future increase Viz, Sook (af's Vineyard) Jacob her son (Lucinda Priss's daughter) Christina and Len (her son) Ned (Poll's son) and old Hanna

Item, I give and devise to my four daughters Catharine Ross, Julianna E. W. Johnson, Matilda C. Johnson, Caroline W. C. Johnson in fee simple, the Catoctin Furnace and all the lands annexed and appropriated to it reserving the water as it now runs for the Mills at Baker's Viz, Goodwill, Stony Fork, Woodland, Poplar Bottom, also Eighty Acres of land part of the First Dividend
1128 conveyed to me by Nicholas Carroll Esq., and all my part of the Mountain tract (except the three lots of Woodland I have laid off—No One I have devised to my son Baker. No 2 is to be sold with the farm where Elias Lefavour did live No Three I still reserve—the Furnace and property with the lands appropriated to it, I wish sold to Mr. Blackford and which I estimate at Twelve Thousand Pounds I look on him a good man I ever have been and still am his sincere his friend and hope and expect he will esteem the terms just and reasonable for my children they are to possess the whole as Tenants in Common in fee—

Item. I do hereby order and direct that the farm that Elias Lefavour lives (except the North end or point of land which I have devised to my son William and the privileges of taking water and

to be carried or conducted through any part of the said farm as directed for the use of his stock and farm) is to be sold by my Executors to the—most advantage at not less than £15 lb. pr acre I also ad- to this farm the woodland lot No. 2 containing 190 acres adjoining Baker's lot No. 1 which Lot No. 2 is to be sold with Lefavour's farm to increase its value—I also order and direct all my land Allegany County to be sold also my lot in and lands near Connersvill- to be sold, also my house and lot in and a lot of ground near to or adjoining Woodstock Town (but it is not conveyed to me yet) both these towns are in Pennsylvania all these lots and lands here mentioned are to be sold by my executors and I hereby authorize and empower my son Baker to convey any part or the -hole or any lands I have sold or to be sold by my executors on the purchase money being paid—

I also authorize and empower my executors to sell the stock (two shares I hold in the Potomack Company, the stock I hold in the Farmers Branch Bank and the stock I hold on the Turnpike Road after my just debts are paid out of the money arising from the sales of the property here directed to — sold the remaining part of the money I direct to be equally divided between my four sons and four daughters—

It is my wish and intention after the death of my beloved wife and I hereby direct that all my household furniture (except that at Auburn which is given Baker as his part) is to be equally divided between Catharine Ross, William, Julianna, Matilda Worth-
1129 ington Caroline and Charles and their heirs, the whole of my live stock of every species and all other property whatsoever both real and personal not mentioned or disposed of in this my last will and testament

I devise and direct to be equally divided among all my children share and share alike—it is to be understood and I hereby devise and direct that the whole of the property given to my children is to them severally and their heirs and assigns forever in fee—

And lastly I do hereby constitute and appoint my dear wife Catharine Johnson and my son Baker Johnson and William Ross Executors of this my last Will and Testament revoking and annulling all former wills by me heretofore made ratifying and confirming this and none other to be my last will and testament.

In testimony whereof I have hereunto set my hand and affixed my seal this Twenty second day of February 1809

B. JOHNSON. [SEAL.]

Signed sealed published and declared by Baker Johnson the above named testator as and for his last will and testament in the presence of us, who at his request and in his presence have subscribed our names as witnesses thereto—

WM. GOLDSBOROUGH.
J. DORSEY.
DENNIS D. HOWARD.

Done before me this 1st day of October 1810

WM. GOLDSBOROUGH.
TOBIAS BUTLER.
THOMAS B. JONES.

FREDERICK COUNTY, *to-wit:*

On the first day of February 1811 then came Catharine Johnson, Baker Johnson and William Ross and made oath on the Holy Evangely of Almighty God that the foregoing and annexed instrument of writing is the true whole will and Testament with the Codicil annexed of Baker Johnson late of Frederick County deceased that hath come to their hands and possession and that they do not know of any other

RICH'D BUTLER, *Regr.*

FREDERICK COUNTY, *to wit:*

On the 1st day of July 1811 came Tobias Butler and
1130 Thomas B. Jones two, of the subscribing witnesses to the foregoing and annexed last Will and Testament of Baker Johnson late of Frederick County deceased and made oath on the Holy Evangely of Almighty God that on the first day of October eighteen hundred and ten Baker Johnson the Testator named in the aforegoing Will in the presence and to these deponents declared and acknowledged the name Baker Johnson thereunto signed to be his the Testators own proper hand and the seal thereunto to be his the Testators seal—And these deponents heard him publish pronounce and declare the same to be his last Will and Testament that at the time of his so doing he was to the best of their apprehension of a sound and disposing mind memory and understanding that they respectively subscribed their names as witnesses to this Will in the presence and at the request of the Testator And that they did also see William Goldsborough the other subscribing witness sign his name as a witness to said Will in the presence and at the request of the Testator and all in the presence of each other.

RICH'D BUTLER, *Regr.*

1131 *Codicil.*

Whereas I Baker Johnson of Frederick County in the State of Maryland, have made and executed my last will and testament in writing bearing date the Twenty Second Day of February in the year of our Lord Eighteen hundred and nine which said last will and testament and every clause bequest and devise therein contained I do hereby ratify and confirm (saving and excepting such part or parts thereof as are by me herein and hereby revoked and made void) and being desirous to alter my last will and testament in certain parts thereof do therefore hereby make this my codicil which it is my will and desire and I do hereby direct shall be held taken and considered as part of my said last will and testament in manner and form following that is to say—

I give and bequeath to my son Worthington Johnson his heirs and assigns forever the whole of my Library of law books.

I also give and devise to my said son Worthington Johnson his heirs and assigns forever the whole of that end of my lot on Church Street in Fredericktown which adjoins the lot I conveyed to Andrew Helvick—

I give and devise to my grand son Baker Johnson Ross his heirs and assigns forever two lots of land situate on South Street in Fredericktown as adjoining the lot which I have conveyed to my grandson William Johnson Ross—

It is my will and desire and I do hereby direct that my executors shall sell and convey in such manner and on such terms as they shall think most beneficial all the land to which I am in any manner entitled lying and being in Alleghany County in the State of Maryland also all the lands to which I am in any manner entitled lying and being in the neighborhood of Connersville in the State of Pennsylvania—

And whereas in and by my said last will and testament and I have given and devised my furnace with the lands thereto belonging and attached to my four daughters as by reference to my said last will and testament above will more fully appear but did not
1132 give any direction for the sale of the said furnace and lands thereto attached, It is my will and desire and I do hereby direct that my Executors shall sell and convey on such terms and in such manner as to them shall seem and appear to them to be most beneficial the said furnace with the lands attached thereto and that the money arising from the sale of the said furnace and lands shall be equally divided among my said four daughters share and share alike—

It is also my will and desire and I do hereby direct that my executors shall cause to be laid off and run out the line from the gate which stands between the overseer's house and the other farm house running a course with the commencement of the fence to intersect the first line of the green spring tract, also an other line to be run from the said gate to the end of the stone fence that is begun to be made on the side of the road leading to my son Baker's House and it is my will and desire that all the lands lying on the North of said line and between said lines and the land I divided with William Bayly, and also all the lands which I have bought of the said William Bayly and which are by him to be conveyed to me shall be considered as attatched to the furnace land, and to be sold and conveyed therewith if in the opinion of my executors it shall be necessary to sell the same with the furnace.

But if the lands so to be laid out, as apd and the said lands so apd to be conveyed to me by the said William Bayly shall not be sold with the furnace then it is my will and derire that the same shall be sold and conveyed by my executors and the money arising from the sale be applied to the discharge of my debts.

And whereas the piece of land described within the lines apd is devised in my will to my son William Johnson I do hereby give and devise to my said son William Johnson his heirs and assigns forever instead thereof all the lands which I bought of the Lefavours
except what lie within the lines of the lands to be laid of-
1133 as apd.

And whereas I estimate the furnace without the lot of land to be laid out as apd. and the land which I bought of William Bayly; as worth twelve thousand pounds it is my will and desire

that if the said lot of land and the said land which I have lately bought of William Bayly shall be sold with the furnace and the furnace and the said lot of land and also the said land to be conveyed to the said William Bayly to me taken to-gether shall sell for more than the sum of twelve thousand pounds that then and in such case my executors shall apply the surplus of the said sales e-ceeding the said sums of twelve thousand pounds to the payment of my debts.—

And whereas I am about to purchase of the executors of the late Richard Potts deceased a piece of land adjoining to the mill farm which I have devised to my son Worthington Johnson it is my will and desire that if I shall conclude the contract for the purchase of the said piece of land from the executors of the said Richard Potts, that the whole of the said piece of land which I shall purchase shall be considered as attached to the said mill farm and shall become the right title and estate of my said son Worthington Johnson, his heirs and assigns forever.

In testimony whereof, I have hereto set my hands and affived my seal this seventh day of March in the year eighteen hundred and eleven.

B. JOHNSON. [SEAL.]

Signed, sealed, published and declared by Baker Johnson the above named testator as and for a codicil to his last will and testament in the presence of us who in his presence, and at his request have subscribed our names as witnesses thereto—

WM. GOLDSBUROUGH.
TOBIAS BUTLER.
THOMAS B. JONES.

FREDERICK COUNTY, *To-wit:*

On the 1st day of July, 1811 then came Tobias Butler and Thomas B. Jones two of the subscribing witnesses to the
1134 aforegoing and annexed the codicil to the last will and testament of Baker Johnson late of Frederick County, deceased and made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign and seal this codicil, that they heard him publish, pronounce and declare the same to be a codicil to his last will and testament that at the time of his so doing he was to the best of their apprehension of a sound and disposing mind memory and understanding that they respectively subscribed their names as witnesses to said codicil in the presence and at the request of the testator and that they did also see William Goldsborough the other subscribing witness sign his name as a witness to said codicil in the presence and at the request of the testator and all in the presence of each other.

RICH'D BUTLER, *Reg'r.*

STATE OF MARYLAND,
Frederick County, To wit:

I hereby certify that the foregoing is a true copy of the last will and testament and codicil together with the probates thereof of

Baker Johnson late of Frederick County, deceased, as recorded in Liber R. B. No. 1 Folio 192 &c. one of the will records in the office of the Register of Wills for Frederick County.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Orphans' Court of said County this 2nd day of August A. D. 1907.

Test:

[SEAL.] (Signed) WM. B. CUTSHALL,
Register of Wills for Frederick County, Md.

[Endorsed:] Will. Baker Johnson, Deceased. Catharine Johnson Baker Johnson, William Ross, Executor. Filed February 11th, 1811. Recorded in Liber R. B. No. 1, Folio 192, one of the Books for Recording Wills in the Office of the Register of Wills for Frederick County, Maryland. Test: Wm. B. Cutshall, Register of Wills. "Exhibit Brown No. 21." Supreme Court, U. S., No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1135 EXHIBIT BROWN No. 22.

The following Deed was Recorded August 21" 1826.

This Indenture, made this twentieth day of July, in the year one thousand eight hundred and twenty six, Between William Ross of Frederick in the State of Maryland of the one part, and Robert Oliver of the City of Baltimore of the other part Witnesseth: That Willians Ross for and in consideration of two thousand and seventy two dollars, current money to him in hand paid before the sealing and delivery of these presents, the receipt whereof the said William Ross doth hereby acknowledge, has granted, bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents doth grant, bargain, sell, alien, release, enfeoff and confirm into the said Robert Oliver, his heirs and assigns forever. All that tract or piece of land called "Kindness" situate and lying and being in Allegany County, in the State of Maryland. Beginning at the end of the third line of the Promised land, and at or near a bounded Maple and wild Cherry trees, and running thence North ninety eight perches, North seventy six degrees, West one hundred and sixty perches, South four hundred and seven perches, South twenty nine degrees East three hundred and sixteen perches, South sixty five degrees, East eighty perches, North fifty six degrees, East one hundred and twenty seven perches, North seventy degrees, East two hundred and fifty perches, North thirty seven degrees East two hundred and fifty four perches, North thirty seven degrees West two hundred and forty eight perches, then with a straight line to the place of beginning. Containing two thousand and seventy two acres of land according to the Certificate of survey thereof taken and returned into the Land Office bearing date the 30th of April A. D. 1774 and by patent bearing date the twenty third day of October A. D. 1793, the said tract called Kindness for the full quantity of two thousand and seventy two
1136 acres, was granted to Col. Baker Johnson as by the said patent reference thereto had will more fully and at large appear.

Together with the rights, members and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatever, legal and equitable of him the said William Ross in and to the said tract of land and premises, hereby bargained and sold, with the rights, members and appurtenances, and every or any part and parcel thereof. To have and to hold the same tract of land called "Kindness" and premises hereby bargained and sold, or meant, mentioned or intended hereby so to be, and every or any part and parcel thereof, with the rights, members and appurtenances unto the said Robert Oliver his heirs and assigns forever to the only proper use and benefit and behoof of him the said Robert Oliver his heirs and assigns forever, and to and for no other use, intent or purpose whatever. And the said William Ross for himself his heirs, executors and administrators doth covenant, grant, promise and agree to and with the said Robert Oliver his heirs, executors and administrators and assigns, that he the said William Ross and his heirs the said tract of land and premises hereby bargained and sold and every part and parcel thereof, with the rights, members and appurtenances to him the said Robert Oliver, his heirs and assigns, against him the said William Ross his heirs and against every person and all persons whatever now claiming or who hereafter may claim, any right, title or interest in or to the same or any part thereof, by from or under him or them, shall and will hereafter warrant and forever defend by these presents. And the said William Ross for himself his heirs, executors and administrators doth covenant, grant, promise
1137 and agree to and with the Said Robert Oliver his executors, administrators and assigns, that he the said William Ross, his heirs shall and will at any time and at all times hereafter make, execute and acknowledge any other deed or deeds or any other instrument or instruments of writing for the better assurance and more certain and effectual conveyance of the said tract of land and premises hereby bargained and sold, and every part and parcel thereof, with the rights, members and appurtenances to the said Robert Oliver his heirs and assigns.

In Witness whereof the said William Ross hath hereunto set his hand and Seal the day and year first hereinbefore written.

WILLIAM ROSS. [SEAL.]

Signed, Sealed and delivered in the presence of,
GEORGE ROHR.
JNO. L. HARDING.

MARYLAND, *Frederick County, To-wit:*

Be it remembered, that on this day the twentieth of July in the year one thousand eight hundred and twenty six, personally appeared William Ross the grantor named in the foregoing deed or instrument of writing, and doth acknowledge the same to be his act and deed, and the tract of land and premises therein mentioned and every part and parcel thereof, with the rights, members and appurtenances, to

be the right, title and estate of Robert Oliver, the grantee also therein named his heirs and assigns, forever, according to the true intent and meaning thereof, and the Acts of Assembly in such cases made and provided, before us two Justices of the Peace in and for the County and State Aforesaid, and at the same time personally appeared before us, the said two Justices Catherine W. Ross, wife of the said William Ross, and acknowledged the afore deed or instrument of writing to be her act and deed, and the land and premises therein mentioned and every part and parcel thereof with the rights, members and appurtenances to be the right, title and estate of
1138 Robert Oliver, the Grantee also therein named, his heirs and assigns forever. And the said Catherine W. Ross being by us privately examined apart from and out of the hearing of her husband whether she doth make and acknowledgement of the same willingly and freely and without being induced thereto by fears or threats of or ill usage of her husband or fear of his displeasure, acknowledges and declares that she doth make her acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure. Taken and certified before us the day and year above written.

Before

GEORGE ROHR.
JNO. L. HARDING.

MARYLAND, *Fred'k County, sct:*

I hereby certify That George Rohr & John L. Harding, gentlemen before whom the aforegoing acknowledgment appears to have been made and whose names are thereto subscribed, were at the time of so doing Justices of the Peace in and for the County aforesaid duly commissioned and sworn.

In Testimony whereof I have hereunto subscribed my name and affixed the seal of my Office this 20th day of July 1826.

[SEAL.] JOHN SCHLEY, *Clk.*

1139 STATE OF MARYLAND,
Allegany County, To-wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing is a true copy of Deed recorded in Liber N. folio 260 &c., one of the Land records of said Allegany County.

In testimony Whereof, I hereto subscribe my name and affix the Seal of said Circuit Court, this 15" day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: William Ross to Robert Oliver. Cert. Copy of Deed. Exhibit Brown No. 22, Supreme Court U. S. No. 1, Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1140 EXHIBIT BROWN No. 23.

George Robins Hayward and Thomas Hayward, Their Patent, "The Diadem," 1696 Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that Whereas George Robins Hayward of Talbot County by his Petition to the Honorable the Chancellor did set forth that a certain Robert Smith on the Eleventh day of April seventeen hundred and seventy four had surveyed for him a tract of land lying then in Frederick, but now in Allegany County called "The Diadem," containing one thousand six hundred and ninety six acres by virtue of a Special Warrant for four thousand acres obtained by him out of the proprietarys Land Office according to the Conditions of Plantation the twenty fifth day of March seventeen hundred and seventy four as appears:—That the said Robert Smith by an assignment dated the ninth day of July seventeen hundred and seventy four assigned and made over all his right title and interest of in and to the certificate of the said land unto the Petitioners father William Hayward late of Talbot County deceased as appears by the assignment endorsed on the Certificate of the said land:—That the Petitioners father by his last will and testament duly made and executed, devised the said land unto his wife Margaret Hayward the Petitioners Mother, during her natural life, and after her decease, the same to the petitioner and his brother Thomas Hayward (now a minor) and their heirs as Tenants in common; the Petitioner therefore prayed that a Patent might be issued to him and the said Thomas Hayward and their heirs, to the use of their said Mother Margaret Hayward for and during her natural life and after her decease to the Petitioner George Robins Hayward and Thomas Hayward and their heirs as Tenants in Common—And the facts appearing to the Chan-
1141 cellor to be truly stated it was thereupon ordered that a Patent should issue accordingly—

The State of Maryland doth therefore hereby Grant unto the said George Robins Hayward and Thomas Hayward the said tract of land called "The Diadem," lying and being in Allegany County aforesaid,

Beginning at two bounded wild cherry trees standing by the side of McCullocks Road at the lower end of a glade on the North side of a fork of Muddy Creek about three or four miles above where the aforesaid road crosses Muddy Creek which creek empties into the West side of the Great Youghyougany River about a mile below Murleys glades, and about fourteen or fifteen miles above the Province line, the aforesaid trees standing about South seventy five degrees East four hundred perches from a place known by the name of Isaac's Camp, and running thence North, sixty degrees East, two hundred and sixty seven perches; North, ten degrees East, one hundred and twenty two perches; North, sixty one degrees West, two hundred and eighteen perches; South, eighty three degrees West, two hundred and thirty seven perches; South, fifty two degrees West,

three hundred perches; South, eighty four degrees West, one hundred and eighty six perches; South, thirty four degrees West, two hundred and fifty four perches; East, seven hundred and eighty perches, then with a straight line to the beginning.

Containing one thousand six hundred and ninety six acres, according to the Certificate of Survey thereof taken and returned into the Land Office bearing date the eleventh day of April, seventeen hundred and seventy four, and there remaining: Together with all rights, profits and privileges thereunto belonging: To Have and To Hold the same unto them the said George Robins Hayward and Thomas Hayward and their heirs, to the use of their said
1142 Mother Margaret Hayward for and during her natural life and after her decease to the aforesaid George Robins Hayward and Thomas Hayward and their heirs forever—as Tenants in Common and not as joint Tenants to take by survivorship.

Given under the Great Seal of The State of Maryland this third day of December seventeen hundred and ninety one.

Witness the Honorable Alexander Contee Hanson Esquire, Chancellor.

GEO. PLATER. [THE GREAT SEAL.] A. C. HANSON, *Chan'r.*

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing is a true copy of the Patent for "The Diadem," 1696 acres, as recorded in Liber I. C. No. G, folio 115 &c. one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 28th day of June, eighteen hundred and ninety seven.

[SEAL.]

WM. O. MITCHELL,
Commissioner of the Land Office.

Endorsed: Copy Patent. "The Diadem" 1696 Acres. Exhibit Brown No. 23. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Cost $1.40.

1143 EXHIBIT BROWN No. 24.

At the request of Mary Bond the following deed was recorded the 20th day of October, 1794, to wit:

This indenture, was made on the first day of August, in the year of our Lord One thousand seven hundred and ninety four between George Robins Hayward and Thomas Hayward of Talbot County, in the State of Maryland, gentlemen, of the one part, and Mary Bond, the wife of William Stoddert Bond of the County and State aforesaid Merchant of the other part.

Whereas a contract and agreement have been heretofore made by and between the said George Robins Hayward and Thomas Hayward and the said William Stoddert Bond for the sale and purchase of the several lands and tenements hereinafter mentioned at the price of eight shillings and four pence, current money by the acre for each

and every acre of the said lands and tenements; and the said William Stoddert Bond hath consented and agreed that the said lands and tenements should be conveyed to and absolutely vested in the said Mary Bond, his wife, and it is the true intent and meaning of the respective parties aforesaid that the said contract and agree- should be carried into complete execution by virtue of these presents.

Now this indenture witnesseth: that the said George Robins Hayward and Thomas Hayward for and in consideration of the sum of eight shillings and four pence current money, by the acre, for each and every acre of the said land and tenements, to them in hand paid, or otherwise secured to be paid, at or before the sealing and delivery of these presents, the receipt whereof the said George Robins Hayward and Thomas Hayward do hereby acknowledge and thereof and of every part and parcel thereof do exonerate, acquit, release and discharge the said William Stoddert Bond and Mary Bond, his
1144 wife, their heirs, executors and administrators for ever by these presents. Have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release convey and confirm unto the said Mary Bond, her heirs and assigns, all and singular that tract and parcel of land, called "The Diadem," situate, lying and being in Allegany County, in the State of Maryland, according to the description, metes and bounds thereof as expressed in the patent for the same, granted to the said George Robins Hayward and Thomas Hayward and bearing date the third day of December, seventeen hundred and ninety one, containing the quantity of one thousand six hundred and ninety six acres of land, with the appurtenances to the same belonging. And also all and singular that other tract and parcel of land, called "Wild Cherry Tree Meadow," situate, lying and being in Allegany County aforesaid, according to the description, metes and bounds thereof, as expressed in the patent of the same, granted also to the said George Robins Hayward and Thomas Hayward, and bearing date the third day of December, seventeen hundred and ninety one; containing the quantity of one thousand three hundred and forty acres of land, with the appurtenances to the same belonging. Together with all and singular the buildings, tenements, orchards, gardens, fences, improvements, woods, waters, benefits, privileges and advantages to the said respective tracts and parcels of land in any wise appertaining. And the reversion and reversions, remainder or remainders, but more especially the respective reversions of the several tracts and parcels of lands and tenements aforesaid, expectant and descendant upon the death of Mrs. Margaret Hayward of Talbot County, aforesaid, the mother of the said George Robins Hayward and Thomas Hayward,
rents, issues, profits and services of the several lands, tene-
1145 ments and premises aforesaid and of every part and parcel thereof. And also all the estate, right, title, interest property, claim and demand whatsoever, both in law and equity of them the said George Robins Hayward and Thomas Hayward of, in and to the several lands, tenements and premises aforesaid, and of, in and to every part and parcel thereof.

To have and to hold all and singular the several and respective tracts and parcels of land and tenements aforesaid, together with the respective appurtenances to the same belonging, unto her the said Mary Bond, her heirs and assigns, to her and their sole and proper uses forever, and to or for no other use, interest or purpose whatsoever. And the said George Robins Hayward and Thomas Hayward, for themselves, their heirs, executors and administrators, do hereby covenant, grant and agree to and with the said Mary Bond, her heirs and assigns, that they the said George Robins Hayward and Thomas Hayward and their heirs, the several and respective lands, tenements and premises aforesaid hereinbefore mentioned to be bargained and sold against themselves and their heirs, and against all manner of persons whatsoever, claiming or to claim by, from, through or under them or any of them unto the said Mary Bond, her heirs and assigns, shall and will warrant and forever by these presents defend.

In witness whereof the said George Robins Hayward and Thomas Hayward have hereto set their respective hands and affixed their respective seals the day and year first within written.

GEORGE ROBINS HAYWARD. [SEAL.]
THOMAS HAYWARD. [SEAL.]

Signed, sealed and delivered in the presence of
W. DAWSON.
JAMES PRICE.

On which deed were the following endorsements, to wit: August the first Ann. Dom. 1794. Received of Mr. William Stoddert
1146 Bond and Mary, his wife, the sum of Twelve hundred and sixty pounds, six shillings and eight pence, current money, being the consideration of the foregoing deed.

GEORGE R. HAYWARD.
THOMAS HAYWARD.

W. DAWSON.
JAMES PRICE.

THE STATE OF MARYLAND,
Talbot County, To wit:

Be it hereby remembered that on the first day of August, in the year one thousand seven hundred and ninety four, personally appeared George Robins Hayward and Thomas Hayward of Talbot County, Gentlemen, parties to the foregoing indenture, before us the subscribers, being two Justices of the Peace of the said State in and for the County aforesaid, and severally acknowledged the same indenture to be their respective act and deed agreeably to the Act of Assembly in such case made and provided.

In testimony whereof we have hereto set our hands the day and year aforesaid.

W. DAWSON.
JAMES PRICE.

THE STATE OF MARYLAND,
Talbot County, To wit:

I hereby certify all manner of persons whom it doth or may concern that Wm. Dawson and James Price of Talbot County, Gentlemen, before whom the foregoing acknowledgment appears to have been made, and by whom the certificate thereof is subscribed, were at the time of taking and certifying such acknowledgment, and yet are, two of the Justices of the Peace of the State of Maryland in and for the County aforesaid, duly commissioned and qualified,
1147 and that to all acknowledgments before them made and by them certified due faith and credit are and ought to be, given as will in Courts of Justice as thereout.

In testimony whereof, I have hereto set my hand and affixed the publick seal of my office this first day of August, Ann. Dom. seventeen hundred and ninety four.

[SEAL.]

WM. S. BOND,
Cl'k Talbot Cot'y Court.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court for Allegany County, and State aforesaid, do hereby certify that the foregoing is a true copy of a Deed as recorded in Liber J. L. No. A, folios 447 &c., one of the Land Records of Allegany County.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, on this 11 day of October, 1907.

[SEAL.]

J. W. YOUNG, *Clerk.*

Endorsed: Deed. George Robins Hayward & Thomas Hayward To Mary Bond. Exhibit Brown No. 24. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1148 EXHIBIT BROWN No. 24*a*.

At the request of Benjamin Stoddert the following deed was recorded the 20th day of October, 1794, to wit:

This Indenture, Made this sixth day of September, one thousand seven hundred and ninety four, by and between William Stoddert Bond of Talbot County in the State of Maryland, Gentlemen, and Mary Bond, his wife, of the one part, and Benjamin Stoddert of George Town in Montgomery County, in the State aforesaid, Esquire, of the other part.

Witnesseth, that the said William Stoddert Bond and Mary, his wife, for and in consideration of the sum of two thousand four hundred and sixty six pounds current money, to them in hand paid or otherwise secured to be paid by the said Benjamin Stoddert at or before the sealing and delivery of these presents, the receipt whereof the said William Stoddert Bond and Mary, his wife, do hereby acknowledge and thereof and of every part and parcel thereof do exon-

erate, acquit, release, and discharge the said Benjamin Stoddert, his heirs, executors and administrators forever by these presents, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, release, convey and confirm unto the said Benjamin Stoddert, his heirs and assigns, all and singular that tract and parcel of land, called the "Diadem," situated, lying and being in Allegany County in the State of Maryland according to the description, metes and bounds thereof as expressed in the patent of the same granted to a certain George Robins Hayward and Thomas Hayward and bearing date the third day of December, seventeen hundred and ninety one and afterwards granted, bargained and sold by the said George Robins Hayward and Thomas Hayward to the said Mary Bond, containing the quantity of one thousand six hundred and ninety six acres of land with the appurtenances to the same belonging,
1149 and also all and singular that other tract and parcel of land, called "Wild Cherry Tree Meadow," situate, lying and being in Allegany County aforesaid, according to the description, metes and bounds thereof, as expressed in the patent of the same, granted also to the said George Robins Hayward and Thomas Hayward and bearing date the said third day of December, seventeen hundred and ninety one, and afterwards granted, bargained, and sold by the said George Robins Hayward and Thomas Hayward to the said Mary Bond, containing the quantity of one thousand three hundred and forty eight acres of land with the appurtenances to the same belonging. Together with all and singular the buildings, tenements, orchards, gardens, fences, improvements, woods, waters, benefits, privileges and advantages to the said respective tracts and parcels of land in any wise appertaining and the reversion and reversions, remainder and remainders (but more especially the respective reversions of the several tracts and parcels of land and tenements aforesaid expectant and descendant upon the death of Mrs. Margaret Hayward of Talbot County aforesaid, the mother of the said George Robins Hayward and Thomas Hayward) rents, issues, profits and services of the several lands, tenements and premises aforesaid and every part and parcel thereof and also all the estate right, title, interest, property, claim and demand whatsoever, both in law and equity, of them the said William Stoddert Bond and Mary Bond, his wife, of, in and to the several lands, tenements and premises aforesaid, and of, in and to every part and parcel thereof.

To have and to hold all and singular the several and respective tracts and parcels of land and tenements aforesaid, together with the respective appurtenances to the same belonging, unto him the said Benjamin Stoddert, his heirs and assigns, to his and their sole and proper uses forever, and to or for no other use, interest or pur-
1150 pose whatsoever, and the said William Stoddert Bond, and Mary Bond his wife, for themselves, their heirs, executors and administrators, do hereby covenant, grant and agree to and with the said Benjamin Stoddert, his heirs and assigns, that they the said William Stoddart Bond and Mary Bond, his wife, and their heirs, the several and respective lands, tenements and premises afore-

said hereinbefore mentioned to be bargained and sold, against themselves and their heirs, and against all manner of persons whatsoever, claiming, or to claim by, from, through or under them or any of them, unto the said Benjamin Stoddert, his heirs and assigns, shall and will warrant and forever by these presents defend.

In witness whereof, the said William Stoddert Bond and Mary Bond, his wife, have hereunto set their respective hands and affixed their respective seals the day and year first within written.

WM. S. BOND. [SEAL.]
MARY BOND. [SEAL.]

Signed, sealed and delivered in the presence of

DAVID KERR.
JAMES PRICE.

On which deed were the following endorsements, to wit: September the 6th Ann. Dom. 1794, Received of Mr. Benjamin Stoddert, the sum of two thousand four hundred and sixty six pounds, current money, being the consideration of the foregoing deed.

W. S. BOND.
MARY BOND.

Witness:

DAVID KERR.
JAMES PRICE.

THE STATE OF MARYLAND,
Talbot County, To wit:

Be it remembered that on the sixth day of September,
1151 Ann. Domini, seventeen hundred and ninety four, personally appeared William Stoddert Bond of Talbot County, Gentlemen, and Mary Bond, his wife, parties to the foregoing indenture, before us the subscribers, being two of the Justices of the Peace of the said State, in and for the County aforesaid, and did severally acknowledge the same indenture to be their respective act and deed agreeable to the Act of Assembly in such case made and provided: and we further certify that we did examine the said Mary Bond wife of the said William Stoddert Bond privately and out of the hearing of her said husband immediately before her acknowledgment of the same indenture according to the Act of Assembly in such case made and provided, and that she declared and asserted that she made her acknowledgment of the same indenture willingly and freely and without being induced thereto by fear or threats of or ill usage by her said husband or fear of his displeasure.

In testimony whereof we have hereto set our hands the day and year aforesaid.

DAVID KERR.
JAMES PRICE.

THE STATE OF MARYLAND,
Talbot County, To wit:

I do hereby certify all manner of persons whom it doth or may concern that David Kerr and James Price of Talbot County, Gentlemen, before whom the foregoing acknowledgment appears to have been made and by whom the certificate thereof is subscribed, were at the time of taking and certifying such acknowledgment and yet are, two of the Justices of the Peace of the State of Maryland, in and for the County aforesaid, duly commissioned and qualified; and that to all acknowledgments before them made and by them certified due faith and credit are and ought to be given as
1152 well in Courts of Justice as thereout.

In testimony whereof I have hereto set my hand and affixed the public seal of my office this 6th day of September, Anna Domini seventeen hundred and ninety four.

[SEAL.] WM. S. BOND,
Clk. Talnt. Cot'y Ct.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court for Allegany County, in said State, do hereby certify that the aforegoing is a true copy of Deed as recorded in Liber J. L. No. A, folios 443 &c., one of the Land Records of Allegany County.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 11 day of October, 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Deed Mary Bond and William S. Bond To Benjamin Stoddert. Exhibit Brown No. 24 A. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1153 EXHIBIT BROWN No. 24*b*.

At the request of Abraham Van Bibber this deed was recorded 24" August, 1802.

This Indenture, made this sixth day of August, in the year eighteen hundred and two, between Benjamin Stoddert of Washington County, in the District of Columbia, of the one part, and Abrham Van Bibber of Baltimore County, in the State of Maryland, of the other part.

Witnesseth, that the said Benjamin Stoddert for and in consideration of the sum of twelve thousand dollars to him in hand paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged hath given, granted, bargained, sold, aliened, enfeoffed and confirmed and by these presents doth give, grant, bargain, sell, alien, enfeoff, and confirm unto the said Abraham Van Bibber his heirs and assigns, the following parcels and tracts of land lying in Allegany County, and State of Mary-

land, to wit: "The Diadem" containing and patented for sixteen hundred and ninety six acres, "Own Delight" containing and patented for three hundred and eighty three and one half acres, "Own Choice" containing and patented for three hundred and seventy seven and a quarter acres, "Own Discovery" containing and patented for three hundred and eighty four and one half acres, "The General's Wish" containing and patented for four hundred and forty acres, also the following Soldiers and Settlers Lots adjoining each other and adjoining a tract of land called "Good and Bad," to wit: No. 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3458, 3459, 3461, 3462, 3440, each containing fifty acres, and a tract of land adjoining the same called "Friendship" containing fifty acres, together with seven hundred and seventeen acres of land being part of the tract called "Good and Bad." Beginning for the said part at the end of the second line of Lot No. 3462, and running with the range of Soldiers Lots as follows, to wit: East two hundred
1154 perches to the end of the first line of Lot No. 3461, North eighty degrees East eighty perches to the end of the second line of Lot No. 3464 and with it reversed North fifty four degrees East eighty eight perches to the end of the fourth line of Lot No. 3466, then with it reversed North two and a half degrees West forty nine perches South eighty one degrees East one hundred and twenty three perches to the end of the second line of Lot No. 3467, then with it reversed North twenty one degrees West eighty two perches, to the end of the third line of Lot No. 3468, and with it reversed North sixteen degrees West eighty nine and a half perches to the end of the third — of Lot No. 3469, North eighteen degrees eighty perches West forty perches, South fifty five and a half degrees West four hundred and seventy two perches, South sixty five degrees West eighty perches, South thirty three and half degrees West one hundred and sixty perches, South six degrees West one hundred and thirty perches, North sixty nine and a half degrees West thirty three perches, North sixty one degrees West thirty perches, South seventy eight degrees West thirty six perches, North thirty two degrees East seventy six perches, South sixty two and a half degrees East eighty six perches, North thirty four degrees East one hundred and eighty three perches, South seventy one degrees East ninety five perches, North thirty four degrees East forty three perches, thence North one hundred and sixty perches to the end of the second line of Lot No. 3462, being the beginning also of a tract of land called "Elk Garden" containing five thousand four hundred and twenty one acres for which patent *could* — issue agreeably to law until six months after the time of compounding on the same to the State of Maryland, altho' the State has been fully paid for the same by the said Ben-
jamin Stoddert and the Soldiers Lots adjoining the said tract
1155 of land called "Elk Garden" numbered 1335 and 1388, containing fifty acres each, together with all and singular the rights, privileges and appurtenances to the same before recited tracts and parcels of land belonging or in any wise appertaining.

To have and to hold all and each of the before cited tracts and

parcels of land with the appurtenances, to him the said Abraham Van Bibber, his heirs and assigns, forever and the said Benjamin Stoddert for himself and his heirs, doth covenant with the said Abraham Van Bibber, his heirs and assigns, that he the said Benjamin Stoddert, and his heirs and assigns, shall and will warrant and forever defend the herein granted land and premises, unto the said Abraham Van Bibber his heirs and assigns, against all persons, claiming or to claim the same and further that he and they shall and will at all times hereafter make, do and execute at the proper cost and charge of the said Van Bibber any other or further act for the better assuring to him the said Van Bibber his heirs and assigns, the lands and premises aforesaid.

In testimony whereof the said Benjamin Stoddert hath hereunto set his hand and affixed his seal the day and year first above written.

BEN. STODDERT. [SEAL.]

Signed, sealed & delivered in presence of, the word "West" between the *S of 4* & seventh lines from the Bottom of the second page being first interlined.

CHARLES LOWNDES.
CHARLES T. BROADHAG.
THOMAS G. SLYE.
ISAAC POLLACK.

On the back of which deed was thus endorsed, to wit:
1156 Rec'd., 6" August 1802, of Abraham Van Bibber, Esq. twelve thousand dollars being the consideration money within mentioned. Ben. Stoddert.

DISTRICT OF COLUMBIA,
WASHINGTON COUNTY, 6" *August*, 1802.

Be it known that — Benjamin Stoddert of the District and county aforesaid have ordained, constituted and appointed and do hereby ordain, constitute and appoint Patrick Murdoch and David Lynn of Allegany County or either of them to be my true and lawful attorneys or attorney for me and in my name and stead to acknowledge the aforegoing instrument of writing being a deed of conveyance of certain lands lying in Allegany County to Abraham Van Bibber to be my act and deed, and the lands and premises therein conveyed to be the right, title and estate of the said Van Bibber agreeably to the laws of Maryland.

In testimony whereof I have hereunto set my hand and seal the sixth day of August, 1802.

BEN. STODDERT. [SEAL.]

Acknowledged to be his act and deed and hand and seal in presence of

THOMAS G. SLYE.
CHAS. LOWNDES.
ISAAC POLLOCK.
CHARLES T. BROADHAG.

MARYLAND,
ALLEGANY COUNTY, *August 23rd*, 1802.

Personally appeared before us two of the Justices of the Peace for the County aforesaid Charles T. Broadhag one of the subscribing witnesses to the power of attorney heretofore annexed from Benjamin Stoddert to Patrick Murdoch and David Lynn and made oath on the Holy Evangely of Almighty God that the same was
1157 executed in his presence by the said Benjamin Stoddert and acknowledged to be his act and deed.

Sworn before

HANSON BRISCOE.
A. BROWNE.

MARYLAND, *Allegany County:*

Personally appeared before us two of the Justices of the Peace of the County aforesaid, Patrick Murdoch, attorney for Benjamin Stoddert and acknowledged the aforegoing and annexed instrument of writing being a conveyance for lands in Allegany County to be the act and deed of the said Benjamin Stoddert.

Acknowledged before us this 23rd day of August, 1802.

HANSON BRISCOE.
A. BROWNE.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court for Allegany County, and said State, do hereby certify that the foregoing is a true copy of deed as recorded in Liber J. L. No. C, folios 532, &c., one of the Land Records of Allegany County.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 11 day of October, 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Deed. Benjamin Stoddert To Abraham Van Bibber. Exhibit Brown No. 24 B. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1158 EXHIBIT BROWN No. 25.

Last Will and Testament of Abraham Van Bibber.

In the Name of God Amen.

I, Abraham Van Bibber, of Baltimore County in the State of Maryland, Gentleman, being of sound and disposing Mind, Memory and Understanding; (praised be Almighty God for the same) knowing the Certainty of Death, and the Uncertainty of the Time thereof; and being desirous of setling my wordly Affairs, that I may be the better prepared to leave this transitory Life, do make publish and declare this my last Will and Testament, in Manner and Form following; that is to say:

First and principally I commit my Soul into the Hands of Almighty God, and my Body to the Earth to be decently buried at the Discretion of my Executors herein after named, And I do will and direct that all my just Debts, funeral Expenses and the Charge of the Probate of this my Will, and all other Charges and Expenses incident thereto shall be paid and discharged by my Executors hereinafter named, out of my Estate. And I do give devise and bequeath unto my two Nephews, Andrew Van Bibber, of Matthews County, in the State of Virginia, and Washington Van Bibber of the State of Maryland, Gentlemen, All that my Estate situate lying and being in Baltimore County aforesaid called Paradise, where I now reside, with the Lands Improvements Hereditaments and Appurtenances thereto belonging and appertaining; To hold unto the said Andrew Van Bibber and Washington Van Bibber, as Joint tenants and not as Tenants in Common, and to their Heirs for Ever; Upon Trust that they, or the Survivor of them, or the Heirs of such Survivor do and shall absolutely sell and dispose of the same Estate Lands Improvements Hereditaments and Appurtenances; and receive the Consideration or Purchase money for the same; and grant
1159 and convey the same Estate and Premises unto the Purchaser or Purchasers of the same, or any Part thereof, in Fee Simple, or otherwise, to the Satisfaction of such Purchaser or Purchasers, upon the Receipt of the Purchase Monies; And I do will and direct that the Money, when received shall be added to and considered as Part of my Personal Estate; to be paid and applied for and towards the Payment of my Debts and the Legacies herein mentioned; and Performance of the Trusts and Agreements mentioned and expressed in the Marriage Deed or Articles with my dear Wife, Mary Van Bibber. And I do will direct and desire that the said Marriage Deed or Articles, made previous to our Marriage, shall be fully confirmed and established in all its Parts, and in every Respect. And I do give devise and bequeath unto my said Wife (over and above and in Addition to that which is secured to her by the said Deed or Articles) All my household and Kitchen Furniture, for ever.

And I do give unto my said Wife for Four Years only next after my Decease, the Use and Labor of my Negroes Frank and Jack; and I do will and direct that at the Expiration of the said Four years the said two Negroes shall be manumitted and set at full and free Liberty, either by my said Wife, or by my Executors herein after named: And I do give unto my said Wife the Use and Labor of my Negro George, until he shall attain his full Age of Twenty Five Years; and I do will and direct that he shall then be manumitted and set at full and free Liberty either by my Wife or my Executors. And I do give unto my said Wife the Use and Labor of my Negro Charles, for Two Years only next after my Decease; at the Expiration of which Time he shall be manumitted and set at full and free Liberty by my Executors; And that my Executors then deliver to him the said Charles, Fifty Pounds, Current Money of Maryland, which I give to him for his own Use. And I do will and
1160 direct that my Negroes Paul and Suke his Wife and their child Matilda, and my Negroes Nanny and her two Daugh-

ters Sukey and the Infant, and their Produce respectively, shall be manumitted and set at full and free Liberty by my Executors immediately after my Decease, and I give my Negro called Joe unto my Nephew Washington Van Bibber during the natural Life of the said Negro; And I give my Negro Bill, now living with the said Washington, unto him the said Washington Van Bibber for the Term of Fifteen years from the Time of my Decease, and then to be manumitted and set at full and free Liberty by the said Washington. And I do give unto the Isabella Jolley, the Sister of William Jolley of City of Baltimore, Merchant, One full share of the Capital or Joint Stock of The Union Bank of Maryland, for ever. And I give unto my Wife's Sister, Eliza Young, One other full share of the same Capital or Joint Stock of The Union Bank of Maryland, for Ever. And I do direct my Executors to pay the Fifty Dollars in full upon each Share, now remaining unpaid, unto that Corporation, and then transfer the same unto the said Isabella Jolley and Eliza Young respectively, and as soon after my Decease as possible. And I give my Negro Isaac unto my great Nephew Henry Peterson Van Bibber, during the said Negro's natural Life. And I do will and direct that all my stock Crops Stores Carriages of every Description Farming Implements and Utensils and other my Property to be upon the Paradise Estate at the Time of my Decease, and considered as Part of my Property there (except as before is mentioned and expressed and except my Plate) shall be sold by Executors, as soon as conveniently may be after my Decease and *And* the Money to arise by the Sale of the same to be added to and considered as Part of my personal Estate, and to be paid and applied for and towards the Payment of my debts and the Legacies herein
1161 mentioned and Performance of the Trusts and Agreements in the said Marriage Articles mentioned and expressed. And I do give devise and bequeath the clear Money to arise and be received as before is mentioned, And all the Rest Residue and Remainder of my Real Personal and Mixed Estates money Bank Stock and other Stocks, Shares in incorporated and other Trusts and Companies, and Property of every Description whereof I shall be seised and possessed at the Time of my Decease, unto and to the Use of all my Children, hereafter to be born in my Life Time, and in due Time after my Decease, and to their several Heirs Executors Administrators and Assigns for Ever, as Tenants in Common and not as Joint tenants, and for and during all my Right Title Term Estate and Interest therein and thereto respectively To be delivered into their own Custody Possession and Power respectively when they shall have severally attained the Age of Twenty One Years, or be married, whichever shall first happen, And in case I shall leave but one Child, then unto and to the Use of such one Child and his or her Heirs Executors Administrators and Assigns: And in case I shall not have any Child or Children as before is mentioned, or in case I shall have any such Child or Children and he she or they shall happen to die under the Age of Twenty one Years and unmarried, and without leaving any lawful Issue to attain the Age of Twenty One Years or marry; Then I do give devise and bequeath all the said clear Money and the Rest Residue and Remainder of the said Real Per-

sonal and mixed Estate and Property of every Description in Manner herein after mentioned and expressed (that is to say) I give devise and bequeath All that my House and Part of a Lot situate on the East side of Hanover Street in the said City of Baltimore, and lying between the said Street and Still house Alley with the Privileges and appurtenances thereto belonging, unto my said
1162 Wife her Heirs and Assigns for Ever: And, in either of the cases before mentioned happening as to my not leaving lawful Issue, I give devise and bequeath All that my Piece or Parcel of Land or Ground situate in Baltimore County aforesaid and near the said City of Baltimore on the East Side of the York Turnpike Road, nearly opposite the House of Doctor Henry Stevenson, which I purchased from the heirs of the late —— Hanson containing Six Acres or thereabouts; with to Dwelling-houses *Dwelling houses* and Improvements thereupon erected and made, and Priviledges and appurtenances thereunto belonging, unto Anne the Daughter of my Brother Isaac Van Bibber, her Heirs and Assigns for Ever. And in either of the Cases before mentioned happening as to my not leaving lawful Issue, I do give devise and bequeath unto all and every the Children of Relative Mrs. Mary Reading, who now lives in the State of Delaware and is the Widow of the late Philip Reading Esqre. deceased, All that my Tract or Parcel of Land or Plantation on Kent Island in Queen Anne's County and State of Maryland aforesaid called Love Point; And also my two Lots at or near Fells Point in the said City of Baltimore, distinguished on a Plat thereof by the Numbers Seven Hundred and Fifty Eight and Seven Hundred and Sixty Five; and likewise all my Right Title and Interest of in and unto the Lands which I purchased from the Baltimore Company in Iron Works, and lying to the Eastward of the said City Of Baltimore; And all the Shares which I shall have and possess in the Capital or Joint Stock of the Bank of Maryland; And also One whole Share in the Susquehanna Canal Corporation; To hold unto and to the Use of all and every the said Child or Children and their respective Heirs Executors Administrators and Assigns as Tenants
1163 in Common and not as Joint tenants for Ever. And in either of the Cases before mentioned happening as to my not leaving lawfull Issue, I do give devise and bequeath unto my Friends and Relations Louise Jolley and Sarah Anne Van Jolley, the Daughters of the before mentioned William Jolley, and to their Heirs and Assigns for Ever, as Tenants in Common and not as Joint tenants, All that my Tract or Parcel of Land lying in Allegany County, in the said State of Maryland, called The Diadem, containing Sixteen Hundred and Ninety Six Acres, or thereabouts; And do will and direct that my Executors shall appropriate the sum of One Thousand Dollars to be laid out soon after my Decease, in erecting Houses and Improvements upon the said Tract of Land called The Diadem, under the Direction of their Father or Friends for their Use and Benefit; and in such Manner that each of them may be entitled unto as equal a Share or Proportion of the same intended Improvements as possible. And in either of the Cases before mentioned happening, as to my not leaving lawful Issue, I do give devise and bequeath unto Henry Peterson Van

Bibber and Hester Van Bibber the Children of my said Nephew Andrew Van Bibber by Sarah Emery Van Bibber of Matthews County Virginia, and to their Heirs Executors Administrators *Administrators* and Assigns for Ever, as Tenants in Common and not as Joint tenants. All the Residue of my Lands and Property in Allegany County aforesaid (except the said Tract of Land called The Diadem) And also all my Lots of Ground in the City of Washington in the Territory of Columbia, which I purchased from Benjamin Stoddard and John Steel; And also all my Estate Right Title and Interest of in and unto certain Lots Lands and Premises in the City of Washington, which were mortgaged by Nicholas Voss unto the said Benjamin Stoddard, and by him the said Benjamin, assigned and trans-
1164 ferred unto me, and to the said Mortgage and Transfer, and Money secured thereby; And also a Bond or Obligation given by the said Benjamin Stoddard to me for the sum of Three Thousand Seven Hundred Dollars, and all the Principal Money and Interest due, and to become due, upon the same Bond or Obligation; And also all my shares in the Capital or Joint Stock of the Bank Of Columbia; And likewise all that my Estate in Matthews County aforesaid, now under the Care Direction and Management of the said Mrs. Sarah Emery Van Bibber, their Mother. And in either of the Cases before mentioned happening as to my not leaving lawful Issue I give devise and bequeath unto my said Nephew, Washington Van Bibber, for his life, and from and after his decease to his lawful Issue, Share and Share alike, all the Residue and Remainder of my Buildings and Lots in the said City of Baltimore, lying to the Eastward of the said Still house Alley and between that ailey and the Basin, or the North West Branch of Patapsco River; and also my two Dwelling-houses and Parts of Lots on the South side of Barre Street, in the same City, and my Plantation in Harford County which conveyed to me by John Jolley of the City of Baltimore and my Houses and Lots in Galesburg in Cecil County also conveyed to me by the said John Jolley; And also my two Lots lying on the East Side of the Center Market Space, in the said City of Baltimore, with the Improvements and Appurtenances; And likewise all my lands, Houses Improvements and Lots in and near Hook's Town in Baltimore County aforesaid; to wit: Pimlico Meadows, Tavern House, and other my Lands and Improvements adjoining and near to the same; And also all that my One equal undivided Tenth Part or Share of in and unto All the Lands Tenements and Hereditaments, which I hold in Common with Charles Carroll of Carrollton, Esq. and Others in Company in Iron Works; And all my Shares in the Capital or
1165 Joint Stock of the Bank of Baltimore; And all my Plate of every Description; Together with all *all* the Books Notes Bonds and Claims on the Governments of France and Spain, for and in Respect of the Brig Neptune of Baltimore and Cargo and other Property conveyed and assigned to me by John Jolley & Co.; Upon Condition that he the said Washington Van Bibber do and shall pay unto The President, Directors and Company of the Bank of Baltimore between Seven Thousand and Eight Thousand Dollars obtained by me on Discount with the Interest; And do and shall pay

unto Richard Keys and Edward N. Clopper of the same Place the Money due to them from me; all which Sums and Debts originated with the said John Jolley & Co. and were undertaken by me to be paid and discharged. But in Case my said Nephew Washington Van Bibber shall happen to die without leaving any lawful Issue, I do give devise and bequeath the whole of the Property by me intended for him and his lawful Issue, as before is mentioned, unto the said Henry Peterson Van Bibber and Hester Van Bibber the Children of my said Nephew Andrew Van Bibber, and their Heirs Executors Administrators and Assigns for Ever, Share and Share alike, as Tenants in Common, and not as Joint tenants. And in either of the Cases before mentioned happening as to my not leaving lawful Issue, then I do give devise and bequeath All the Rest Residue and Remainder of my Estate Effects and Property of every kind and Description, and which I shall be possessed of and entitled unto at the Time of my Decease, and not otherwise by me disposed of unto my Two Nephews the said Washington Van Bibber and Andrew Van Bibber, and to their several Heirs Executors Administrators and Assigns for Ever, or for and during all my Estate Right Title and Interest therein and thereto respectively to be equally divided between them Share and Share alike; To hold as Tenants in
1166 Common and not as Joint tenants. And it is my Will and Desire and I do hereby direct that, in Case any Dispute or Difference shall happen to arise between or amongst any Legatees or Heirs, the Honorable the Chancellor of the said State of Maryland, for the Time being, shall in a summary Way, decree Justice and Equity to be done by and between such Disputants; and that such Decrees shall be considered as Parts of this my Will. And I do hereby nominate constitute and appoint my said Two Nephews, Andrew Van Bibber and Washington Van Bibber, to be the Executors of this my last Will and Testament And I do hereby revoke and make void all former Will and Wills, and Codicils to the same, by me at any Time heretofore made, and do publish and declare *declare* this to be my last Will and Testament. In Witness whereof I the said Testator, Abraham Van Bibber, have hereunto set and put my Hand and Seal, the Eleventh Day of June, in the Year of our Lord Eighteen Hundred and Five.

ABM. V'N BIBBER. [SEAL.]

Signed sealed published and declared by the said Testator, Abraham Van Bibber, as and for his last Will and Testament, in the Presence of us who have subscribed our Names as Witnesses hereto, at his request, in his Sight and Presence and in the Sight and Presence of each other.

(The Words "and John Steel" being first interlined in the fifth Line of the fifth Side.)

ASHTON ALEXANDER.
J. M. DUMAN.
WM. HOLLINS.

BALTIMORE COUNTY, *To wit:*

On the 14th day of September 1805 came Ashton Alex-
1167 ander & William Hollins two of the subscribing Evidences to the aforegoing last Will and Testament of Abraham Van Bibber late of said County, deceased and made oath &c. that they did see the Testator sign and seal this Will that they heard him publish pronounce and declare the same to be his last Will and Testament, that at the time of his so doing he was to the best of their apprehension of sound and disposing mind memory and understanding and that they subscribed their names as Witnesses to this Will in his presence at his request and in the presence of each other and of L. M. Duman the other Witness. Sworn to before me Register of Wills for Balto. County

WM. BUCHANAN, *Reg.*

THE STATE OF MARYLAND,
Baltimore City, sc:

I, Bart. E. Smith, Register of Wills, and by law, Keeper of the Seals and of the Records, and of the Original Papers of the Orphans' Court of Baltimore City, Do Hereby Certify that the aforegoing is a true and full copy of the Last Will and Testament of Abraham Van Bibber, late of said City, deceased, Together with the Probate thereof taken from "Wills" Liber W 13 No. G folios 436 &c. Being one of the Records filed and kept in the Office of Register of Wills for Baltimore City.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court and Office, this 16th day of September in the year of our Lord nineteen hundred and seven.

[SEAL.] BART. E. SMITH,
Register of Wills for Baltimore City.

1168 MARYLAND, *sct:*

I, Myer J. Block, Chief Judge of the Orphans' Court of Baltimore City, in the State aforesaid, do certify, that the aforegoing Attestation of Bart. E. Smith, Register of Wills for said City, is in due form and by the proper Officer.

Given from under my hand, at the City of Baltimore, this 16th day of September in the year of our Lord nineteen hundred seven.

MYER J. BLOCK.

STATE OF MARYLAND,
Baltimore City, sct:

I hereby testify, that the Honorable Myer J. Block, by whom the above certificate was given, and who hath thereto subscribed his name, was at the time of so doing, Chief Judge of the Orphans' Court of Baltimore City, duly elected, commissioned and qualified.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Court, this 16th day of September in the year of our Lord nineteen hundred seven.

[SEAL.] BART. E. SMITH,
Register of Wills for Baltimore City.

Endorsed: Last Will and Testament of Abraham Van Bibber Copy Exhibit Brown No. 25. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1169 EXHIBIT BROWN No. 26.

At the request of John Crane this Deed was recorded June 2" 1860.

This Indenture, Made this twenty sixth day of September in the year of our Lord one thousand eight hundred and forty two, between Sarah Ann Jolly Campbell of the City of Baltimore in the State of Maryland of the one part and John Crane of the State of Virginia of the other part, Witnesseth:

That the said Sarah Ann Jolly Campbell hath for and in consideration of the sum of two hundred and fifty dollars, current money of the United States, to her in hand paid at and before the ensealing and delivery of these presents, the receipt of which she doth acknowledge given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents doth give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the said John Crane his heirs and assigns, all that tract or parcel of land lying, being and situated on the Western boundary line between the said States of Maryland and Virginia called and known by the name of "Diadem" granted by the said State of Maryland to George Robins Haywood and Thomas Haywood by letters patent bearing date on the third day of December in the year seventeen hundred and ninety one and containing according to said letters patent one thousand six hundred and ninety six acres, together with all and singular the rights, privileges, members, advantages and appurtenances unto the same belonging or in any wise appertaining, and all estate title and interest, trust, property, claim and demand whatsoever at law and in equity of the said Sarah Ann Jolly Campbell of in and to the same. And the said Sarah Ann Jolly Campbell for herself and her heirs, doth hereby covenant promise and agree to and with the said John Crane his heirs
1170 and assigns, that the said Sarah Ann Jolly Campbell, her heirs and assigns, the tract and parcel of land and premises above mentioned and described herein intended to be granted, bargained and sold with the appurtenances unto the said John Crane his heirs and assigns shall and will warrant and forever defend by these presents against the claims of all persons claiming in any manner by from, under or in trust for the said Sarah Ann Jolly Campbell or her heirs.

In Testimony Whereof the said Sarah Ann Jolly Campbell hath hereunto set her hand and affixed her seal on the day and year first above written.

SARAH ANN JOLLY CAMPBELL. [SEAL.]

Signed Sealed & Delivered in presence of
SAML. FARNANDIS,
JESSE CLOUD.

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STATE OF MARYLAND,
City of Baltimore, To wit:

Be it remembered and it is hereby certified that on this twenty sixth day of September in the year of our Lord one thousand eight hundred and forty, before the subscribers, two Justices of the Peace of the State of Maryland in and for the City of Baltimore aforesaid, appears Sarah Ann Jolly Campbell she being known to us to be the person who is named and described as professing to be as party to the foregoing deed or Indenture and doth acknowledge the said Indenture or instrument of writing to be her act and deed.

In Testimony whereof we hereunto subscribe our names on the day and year aforesaid.

SAMUEL FARNANDIS.
JESSE CLOUD.

STATE OF MARYLAND,
Baltimore County, sct:

I Hereby Certify that Samuel Farnandis and Jesse Cloud, gentlemen before whom the aforegoing acknowledgment was made and who have thereto signed their names were at the time of so doing two Justices of the Peace of the State of Maryland in and for
1171 the City of Baltimore duly commissioned and sworn.

In Testimony whereof I hereto set my hand and affix the seal of Baltimore County Court this 20th day of September 1840.

[SEAL.] THOS. KELL, *Clk.*

STATE OF MARYLAND,
Allegany County, To-wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid hereby certify that the above and foregoing is a true copy of Deed recorded in Liber No. 19 folio 27 &c., one of the Land records of said Allegany County.

In Testimony Whereof I Hereto subscribe my name and affix the Seal of said Circuit Court this 15″ day of July, A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Sarah A. J. Campbell To John Crane. Cert. Copy of Deed. Exhibit Brown No. 26. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1172 EXHIBIT BROWN No. 27.

At the request of John Crane this Deed was recorded June 2″, 1860.

This Indenture, Made this fourth day of September, in the year of our Lord one thousand eight hundred and thirty nine, between William I. Wallis of the City of Baltimore and State of Maryland of the one part, and John Crane of the State of Virginia of the other part, Witnesseth:—That the said William I. Wallis hath for and in

consideration of the sum of Two hundred dollars current money of the United States to him in hand paid at and before the ensealing and delivery of these presents, the receipt of which he doth hereby acknowledge, granted, bargained, sold, released, ali-ned and confirmed, and by these presents doth grant, bargain, sell, release, alien and confirm unto the said John Crane his heirs and assigns all that tract or parcel of land lying, being and situated on the Western Boundary line between the States of Maryland and Virginia, called and known by the name of "Diadem" patented by the State of Maryland to George Robins Hayward and Thomas Hayward on the third day of December in the year seventeen hundred and ninety one, and containing according to the patent thereof one thousand six hundred and ninety six acres, together with all and singular the rights, privileges, members, advantages and appurtenances unto the same belonging or in any wise appertaining and also all the estate, right, title and interest, trust, property claim and demand whatsoever at law and in equity of him the said William I. Wallis of in and to the same. And the said William I. Wallis for himself and his heirs doth hereby covenant, promise and agree to and with the said John Crane, his heirs and assigns that he the said William I. Wallis his heirs and assigns, the tract of land and premises above described and hereunto mentioned to be granted, bargained sold and
1173 released with the appurtenances unto the said John Crane, his heirs and assigns, shall and will forever warrant and defend by these presents against the claim of all persons claiming or to claim in any manner by, from, through or under him or any of his heirs, In Witness whereof the said William I. Wallis hath hereunto set his hand and affixed his seal the day and year first above written.

WILLIAM I. WALLIS. [SEAL.]

Signed, Sealed & Delivered in presence of
NOAH RIDGELY.
JOHN WRIGHT.

STATE OF MARYLAND, *City of Baltimore, act:*

Be it remembered and it is hereby certified that on this fourth day of September in the year of our Lord one thousand eight hundred and thirty nine before us the subscribers two Justices of the Peace, in and for the City of Baltimore, State of Maryland aforesaid, personally appeared William I. Wallis, he being known to us to be the person who is named and described as and professing to be the party to the foregoing deed or indenture and acknowledged the said indenture or instrument of writing to be his act and deed.

In Testimony whereof we hereunto subscribe our names on the day and year aforesaid.

NOAH RIDGELY.
JOHN WRIGHT.

STATE OF MARYLAND, *Baltimore County, sct:*

I hereby Certify that Noah Ridgely and John Wright, Gentlemen before whom the aforegoing acknowledgment was made and who have thereto subscribed their names were at the time of so doing two Justices of the Peace of the State of Maryland in and for the City of Baltimore duly commissioned and Sworn.

In Testimony whereof I have hereto set my hand and affixed the Seal of Baltimore County Court this 4th day of Septem-
1174 ber 1839.

[SEAL.] THOS. KELL, *Clerk.*

STATE OF MARYLAND, *Allegany County, To-wit:*

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, state aforesaid, hereby certify that the above and foregoing is a true copy of Deed Recorded in Liber No. 19 folio 28 &c., one of the Land records of said Allegany County.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court this 15th day of July, A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: William I. Wallis To John Crane. Cert. Copy of Deed. Exhibit Brown No. 27. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1175 EXHIBIT BROWN No. 28.

Francis Deakins, His Patent, "Elder Spring," 411 Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that Whereas William Deakins, Junior, on the twenty sixth day of April seventeen hundred and seventy four had surveyed for him a tract of land called "Elder Spring," lying then in the County of Frederick now in Washington County, and containing four hundred and eleven acres, by virtue of so much part of a warrant for Eighteen hundred and eighteen acres granted him out of the Proprietarys Land Office the twenty sixth day of March seventeen hundred and seventy four, according to the Conditions of Plantation then in force as appears—

That the said William Deakins Junior, by an assignment dated the twenty sixth day of August seventeen hundred and eighty one made over unto Francis Deakins and his heirs the Cercificate of the aforesaid tract of land, and the right of the proprietary being now vested in the State of Maryland—

The said State doth hereby Grant unto him the said Francis Deakins all that the aforesaid tract or parcel of land called "Elder Spring", lying in Washington County,—

Beginning in the centre between two bounded Trees a white oak, and a Black gum standing on a draught of Buffelow Run about fifty perches West, from the Main Run and about two hundred yards

from a Spring that breaks out of a ridge, which divides the waters of Sandy Creek and Buffelow Run, about eight or nine miles Southwardly of Jacob Fromans Mill, and running thence North, six degrees East, one hundred and forty six perches; North, twenty degrees West, eighty perches; North, seven degrees East, one hundred and seventy three perches; West, one hundred perches;
1176 South, sixty seven degrees West, sixty perches; South, twenty five degrees West, eighty perches; South, thirty two degrees East, forty perches; South, forty eight degrees East, ninety eight perches; South, twenty perches; South, thirty eight degrees West, eighty-two perches; South, eight degrees West, thirty perches; South, forty two degrees East, forty perches; South, ten degrees West, one hundred and forty seven perches; South, fifty one degrees East, fifty six perches; North, seventy seven degrees East, eighty perches; North, forty one degrees East, forty perches; then with a straight line to the beginning—

Containing four hundred and eleven acres, according to the Certificate of Survey thereof, taken and returned into the Land Office bearing date the twenty sixth day of April seventeen hundred and seventy four, and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging. To have and to Hold the same unto him the said Francis Deakins his heirs and assigns forever—

Given under the Great Seal of the State of Maryland this fifteenth day of February seventeen hundred and eighty six—

Witness the Honorable John Rogers, Esquire, Chancellor.

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the aforegong is a true copy of the Patent for "Elder Spring" 411 acres as recorded in Liber I. C. No. A. folio 632 &c. one of the record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Land Office of Maryland, this 28th day of
1177 May eighteen hundred and ninety seven,

[SEAL.] WM. O. MITCHELL,
Commissioner of the Land Office.

Endorsed: Copy Patent "Elder Spring," 411 acres. Exhibit Brown No. 28. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Cost $1.15.

1178 EXHIBIT BROWN No. 29.

In the Name of God Amen I Francis Deakins of George Town in the District of Columbia, being in good Health, Considering the uncertainty of life and hoping for a fuure Bliss, do make this my Last Will and Testament—

I Give to my Affectionate Wife Heanor Deakins, the nine following Negroes—Hercules-Zelby-JamesBlack Jack-Sophia-Andrew-Ra-

chel-Sarah and Milley—Together with one Thousand acres land part of a tract of 2500 acres in Randolph County Virginia surveyed for Francis & William Deakins the 27th day of April 1793 to be laid out at the most South end of said tract. To her and her Heirs and Assigns for ever.

I Give to my Dear Wife During her Life, the House and Lot in George Town in which we Live, with the furniture, therein—Lot No. 48 on which my Stable and Office are—also the privilege of *geting* fire wood from eighteen and a half acres land near Gen'l Forrest Conveyed to me by Benjamin Stoddert—our Chariot pair of Horses & two Cows, Together with two Hundred and ten pounds current money to be paid to her by my Executors yearly and every year After my Decease and During her Life, Provided that my wife Relinquish her right of Dower to all my lands, which in the unimproved State in which they are, Can be of no bennefit or Advantage whatever to her—I further Give to my dear Wife, During her Life, my three negro men, Tom-Stephen and Mulatto Jack—And that she may not be perplexed with the Management of them, I advise her to permit them the privilege to hire themselves so long as they pay her twenty five shillings each pr. month and support themselves with Cloath Diet and Tax Clear of Expense to her.

I give to my brother Leonard M. Deakins two Sons William Francis Deakins and Francis Deakins, Six Thousand Acres Choice of my lands in Virginia not sold at my Decease, and Clear of the 1179 undevided half of the said lands belonging to *the* The Estate of William Deakins Jr To them the said William Francis Deakins and Francis Deakins their Heirs and Assigns for-ever

I Give to my Nephew John Hoye my tract of land Called Elder Spring patented to me in Maryland for four Hundred and eleven acres, also fifteen Hundred and thirty six acres part of a tract of five Thousand Acres in Harrison County which was Conveyed by me to him in 1799 for Certain purposes, & for which I hold his obligation to Reconvey it to me or my order—which said two tracts I give to him his Heirs and Assigns for-ever

And all the Residue of my Estate Real and personal—After my Just debts are paid—I Do by this my Last Will and Testament, Desire and Direct to be Devided and Apportioned Between my two brothers Paul Hoye and Leonard M. Deakins, in Manor and form following—to-wit one third part thereof to Paul Hoye his Heirs and Assigns for-ever, And the Remaining two thirds to Leonard M. Deakins his Heirs and Assigns for-ever—And whereas I have made many Conveyance- of lands, my Will is that in case any such land or Conveyance be hereafter found Defective, so as to admit of a legal Claim on my Estate or legal Representative, that when such legal Claim is Established against my Estate, it shall be paid with all Cost, by my aforesaid two brothers, or their Heirs Executors or Administrators, in the same proportion they Receive the aforesaid Residue of my Estate—

And Lastly I do by this my Last Will and Testament Constitute and Appoint my Brother Leonard M. Deakins and my Nephew John Hoye my Executors of this my last Will and Testament Giving to

them full power to perform and fulfill all Contracts by me made and
to execute and perfect all Conveyance for Land Contracted by
1180 me to be Conveyed in as full manor as I myself if Living
Could do

In Witness whereof I do Hereunto Set my Hand and Seal this twenty fourth Day of September Eighteen Hundred and four—

FRANCIS DEAKINS [SEAL.]

By

Signed Sealed and Acknowledged By the said Francis Deakins as and for his last Will and Testament in the presence of us who have hereunto set our Hands as Witnesses in his presence and at his Request and in the presence of each of us

WILLM. WHANN
CLEMENT SMITH
WM. D. BEALL

DISTRICT OF COLUMBIA,
Washington County, sct:

On the fourteenth day of November in the year one thousand, eight hundred and four came before me the undersigned, John Hoye one of the Executors within named and made oath on the holy Evangels that the within and aforegoing instrument of writing is the true and whole last Will and testament of Francis Deakins late of Washington County deceased that hath come to his possession or knowledge and that he doth not know of any other—

On the same day above mentioned, came William Whann, Clement Smith and William D. Beall the three subscribing Witnesses to the within and aforegoing last will and testament of Francis Deakins late of Washington County deceased and severally made oath on the holy Evangels that they did see the testator Francis Deakins, therein
named sign and seal the said will, that they heard him pub-
1181 lish, pronounce and declare the same to be his last Will and
testament, that at the time of his so doing, he was, to the best of their apprehension, of sound and disposing mind, memory and understanding, and that they respectively subscribed their names as witnesses to this will in the pre-sence and at the request of the Testator and in presence of each other—

Sworn before and Certified by

JNO. HEWITT,
Register of Wills for Washington County.

Know all men by these presents, That we Leonard M. Deakins of Prince George's County, Maryland John Hoye of —— County in the same State William Emack and Morduit Young both of Washington County, District of Columbia are held and firmly bound to the United States of America in the full and just sum of Twenty thousand dollars, current money, to be paid to the said United States, their certain attorney or assigns; to which payment well and truly to be made and done we bind ourselves and each of us our and each of our heirs, executors and Administrators, in and for the whole,

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jointly and severally, firmly by these presents, Sealed with our seals, and dated this twenty seventh of November in the year of — Lord, one thousand eight hundred and four,—The Condition of the above Obligation is such, That if the above bounden Leonard M. Deakins and John Hoye shall well and truly perform the Office of Executors of Francis Deakins late of Washington County aforesaid deceased, according to law, and shall in all respects, discharge the duties of them required by law as Executors aforesaid, without any injury or damage to any person interested in the faithful performance of the said Office, then the above obligation shall be void; it is oth-
1182 erwise to be in full force and virtue in Law.

L. M. DEAKINS. [SEAL.]
JOHN HOYE. [SEAL.]
WILLIAM EMACK. [SEAL.]
MORDUIT YOUNG. [SEAL.]

Signed, sealed and delivered in presence of
JNO. HEWITT.

From Administration Bonds J. H. No. 1., Folio 89.

No. 99.

Estate of FRANCIS DEAKINS, Late of Washington County, D. of Columbia.

Legal representative.	Amount of bond.	
Leonard M. Deakins, John Hoye, Executors.	——	William Emach. Manduit Young.

Date. Docket entries.

1804.
Nov. 27". Letters Testamentary issued.

* * * * * * *

Extract from Administration Docket J. H. No. 1. Old Series, folio 33.

1183 Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, Do Hereby Certify, That the foregoing are true copies of the original will of Francis Deakins, deceased, and the proof thereof, as filed and recorded in the office of the Register of Wills for the District of Columbia Clerk of the Probate Court aforesaid; also the bond recorded in Administration Bonds, J. H. No. 1, at folio 89 and extract from Administration Docket J. H. No. 1, Old Series, at folio 33.

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I further Certify, That I have compared the foregoing copies with the original records in said office and find them to be full, true and correct transcripts thereof.

Witness my hand and the seal of the said Probate Court, this 6th day of August, A. D. 1907.

[SEAL.] JAMES TANNER,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, do hereby certify that James Tanner Esquire, who executed the foregoing attestation, is the Register of Wills in and for said District, duly commissioned and qualified, and Clerk
1184 of the said Probate Court; and the said attestation is in due form of law by the proper officer.

In Testimony Whereof, I hereunto set my hand and seal, this 6th day of August Anno Domini 1907.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

DISTRICT OF COLUMBIA, *To wit:*

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 6th day of August, 1907.

[SEAL.] JOHN R. YOUNG, *Clerk,*
By —— ——, *Ass't Clerk.*

Endorsed: Copy of Will of Francis Deakins. Exhibit Brown No. 29. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1185 EXHIBIT BROWN No. 30.

At the request of William W. Hoye this deed was recorded September 1" 1834.

This Indenture made this first day of September in the year of our Lord one thousand eight hundred and thirty four between John Hoye and Mary Hoye his wife of Allegany County and State of Maryland of the one part and William W. Hoye of the same County and State aforesaid of the other part. Witnesseth that the said John Hoye and Mary Hoye his wife for and in consideration of the sum of — Dollars current money of the United States to them the said John Hoye and Mary Hoye his wife in hand paid by the said William W. Hoye at or before the sealing or delivery of these presents

the receipt whereof the said John Hoye and Mary Hoye his wife do hereby acknowledge and thereof do release acquit and discharge the said William W. Hoye his heirs executors and administrators by these presents they the said John Hoye and Mary Hoye his wife has granted bargained and sold and by these presents do grant bargain and sell unto the said William W. Hoye his heirs and assigns All the following described tracts or parts of tracts of land situated in Allegany County and State of Maryland on the waters of the Yochegany River viz All that part of a tract called Friends Delight and all that part of a tract of land called "The Gleanings" which parts of tracts of land was conveyed to John Hoye by Paul Hoye by deed bearing date the 15" day of June 1801 and recorded in the land records of Allegany County reference being had to said record will more fully appear containing about 320 acres in both pieces except that part of said tract conveyed by John & Dimirick Matingly on the 28" Febry. 1831 and also one other tract of land situated in said County called "Elder Spring" surveyed for Wm. Dekins 26" April 1774 and was patented William Deakins willed to Francis 1186 Deakins and Francis Deakins willed it to John Hoye containing by survey 411 acres this tract was hereafter conveyed to William W. Hoye but was defective in the deed now made good Together with all and singular the improvements advantages profits and appurtenances thereunto belonging or in any wise appertaining to him.

to hold unto to him the said William W. Hoye his heirs and assigns forever and also all the estate right title use trust property claim and demand whatsoever of them the said John Hoye and Mary Hoye his wife of in and to the aforesaid Lands & premises hereby bargained and sold and to every part and parcel thereof to the only proper use and benefit of him the said William W. Hoye of his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said John Hoye and Mary Hoye his wife for themselves and their heirs do hereby covenant grant promise and agree with the said William W. Hoye his heirs and assigns that they the said John Hoye and Mary Hoye his wife and their heirs the said tract or parcel of land and premises hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said William W. Hoye his heirs & assigns against them the said John Hoye and Mary Hoye his wife and their heirs and against all and every other persons or persons whatsoever claiming any legal title thereto by from or under them shall & will warrant & forever defend.

It witness whereof the said John Hoye and Mary Hoye his wife has hereunto subscribed the names and affixed the seal the day and year above written.

JOHN HOYE. [SEAL.]
MARY HOYE. [SEAL.]

Signed sealed and delivered in presence of
JNO. McNEIL.
ADAM SEGLER.

1187 THE STATE OF MARYLAND,
Allegany County, To wit:

Be it remembered that on this first day of September in the year of our Lord one thousand eight hundred and thirty four personally appears John Hoye party grantor in the above deed or instrument of writing named before us the Subscribers two Justices of the peace legally qualified in and for the county aforesaid and acknowledged the above deed or instrument of writing to be his act and deed and the land and premises therein mentioned are hereby bargained and sold to be the right and estate of the above named William W. Hoye party grantee also there named his heirs and assigns forever according to the purport true intent and meaning of the said deed or instrument of writing and the acts of assembly in such case made — provided, and the said Mary Hoye wife of the said John Hoye personally appears and did sign and seal the said instrument before us Justices aforesaid out of the presence and hearing of her husband whether she doth execute and acknowledge the same voluntarily and freely without being induced to do so by fear or threats of or ill usage by her said husband or fear of his displeasure declares and acknowledges that she doth execute and acknowledge the same voluntarily and freely and without being induced so to do by fear or threats of or ill usage by her said husband or fear of his displeasure we further certify that the said parties so acknowledging is personally known to us to be the party grantor in the above instrument named.

JOHN McNEILE.
ADAM SIGLER.

STATE OF MARYLAND,
County of Allegany, To wit:

I, John W. Young Clerk of the Circuit Court in and for
1188 Allegany County State aforesaid hereby certify that the foregoing is a true copy of deed recorded in Liber No. R folio 194 one of the Land Records of said Allegany County.

In Testimony whereof I hereto subscribe my name and affix the seal of said Court this 4" day of August 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. John Hoye *et ux.* To William W. Hoye. Exhibit Brown No. 30. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1189 EXHIBIT BROWN No. 31.

At the request of Daniel Raymond this deed was recorded the 22" Jany. 1833.

This Indenture made this fourteenth day of January one thousand eight hundred and thirty three between William W. Hoye and Mary his wife of Allegany County in the State of Maryland of the one

part and Daniel Raymond of the County and State aforesaid of the other part.

Witnesseth that the said William W. Hoye for and in consideration of the sum of One Hundred and Sixty Six Dollars and Fifty Cents current money of the United States to him in hand paid by the said Daniel Raymond before the sealing and delivery of these presents the receipt whereof of he the said William W. Hoye and Mary his wife doth hereby acknowledges hath granted, bargained, sold, aliened, enfeoffed, and confirmed and by these presents doth grant bargain sell alien enfeoff and confirm unto the said Daniel Raymond his heirs assigns all and every part of the tract or parcel of land called "Elder Spring".

Beginning for the same at the original beginning of said tract being a bounded white oak and gum and running thence with the first line of said tract North Six degrees, East ninety eight perches, North Eighty eight degrees, West Sixty nine perches, South Six degrees, West two hundred and twenty three perches, to the end of forty four perches on the fourteenth line of said tract and with the line of said tract, South fifty one degrees, East twelve perches North Seventy Seven degrees, East Eighty perches, North forty one degrees, East forty perches, then by a straight line to the beginning containing one hundred and eleven acres being and lying in Allegany County State of Maryland together with all and singular the
1190 buildings improvements woods ways water courses rights libertys privileges hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions and remainders rents issues and profits thereof and all the estate right title interest whatsoever of them the said William W. Hoye and Mary his wife both at law and in equity of into and out of the said tract or parcel of land and premises hereby bargained and sold or meant mentioned or intended hereby so to be and every or any parcel thereof.

To have and to hold the said tract or parcel of land so as aforesaid described called "Elder Spring" or by whatsoever the same may be called together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold or meant mentioned or intended hereby so to be and part and parcel thereof with then and every of their appurtenances with the said Daniel Raymond his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said William W. Hoye and Mary his wife for themselves their heirs executors and administrators doth hereby covenant grant promise and agree to and with the said Daniel Raymond his heirs executors and administrators or assigns that he the said William W. Hoye and Mary his wife and their heirs the said tract or parcel of land and premises hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said Daniel Raymond his heirs and assigns against him the said William W. Hoye and Mary his wife and their and against all and every person or persons whatsoever claiming or to claim anny right title or interest in and to the same or any part thereof shall and will hereafter war-

rant and forever defend by these presents claiming or under me by any right or title.

1191 In Witness whereof the said William W. Hoye and Mary his wife hath hereunto set their hands and affixed their seals the day and year above written.

W. W. HOYE. [SEAL.]
MARY HOYE. [SEAL.]

Taken and acknowledged before us the day & year above written.
JACOB CLAMMER.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

On this fourteenth day of January in the year of our Lord one Thousand Eight Hundred and Thirty three personally appears William W. Hoye of Allegany County being the party grantors above named before us the subscribers two Justices of the peace and acknowledged the within deed or instrument of writing to be his act and deed and the land and premises therein mentioned and thereby bargained and sold to be the right and estate of the within named Daniel Raymond party grantee also therein named his heirs and assigns forever according to purport true intent and meaning of the said deed or instrument of writing and the act of assembly in such case made and provided and now at the same also personally appeared Mary Hoye wife of the said William W. Hoye before us two Justices of the peace and acknowledged the said deed or instrument of writing to be his act and deed and the lands and premises therein mentioned to be the right & estate of the within named Daniel Raymond his heirs and assigns forever and the *and the* said Mary Hoye being by us privately examined apart and out of the hearing of her husband whether she doth make her acknowledgment of the willingly and freely and without being induced thereto by fear or threats of ill usage by her husband or fear of his displeasure acknowledges that she does make her acknowledgment of the same willingly and truly and without being induced thereto by

1192 fear or threats of or ill usage by her husband or fear of his displeasure.

Taken and certified the day and year above written.

JACOB CLAMMER.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County hereby certify that the foregoing is a true copy of Deed recorded in Liber No. O, folio 210 one of the Land Records of said Allegany County.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court this 4" day of August 1904.

[SEAL.] J. W. YOUNG, *Clk.*

Endorsed: Certified Copy of Deed. W. W. Hoye *et ux.* To Daniel Raymond. Exhibit Brown No. 31. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1193 EXHIBIT BROWN No. 32.

At the request of Ralph Thayer the following Deed was recorded April 20" 1846:

This Indenture made this 20" day of April in the year of our Lord one thousand eight hundred forty six between John M. Carleton Sheriff of Allegany County in the State of Maryland of the one part and Ralph Thayer of said County and State of the other part.

Witnesseth whereas on the 1st. day of July 1841 a certain writ of the State of Maryland of *Fieri Facia* issued forth out of the Allegany County Court to the Sheriff of Allegany County directing, reciting, that whereas at County Court begun and held at the Court house in the town of Cumberland in and for said County on the third Monday of April in the year of our Lord eighteen hundred and thirty eight a certain Samuel Coddington by the judgment of the same Court recovered against a certain Daniel Raymond late of Allegany County yeoman as well the sum of one thousand dollars for his damages which he had sustained as well by occasion of the non performance of a certain promise and assumption by the said Daniel Raymond to the said Samuel Coddington before that time as the sum of five dollars and ten and one third cents for his costs and charges by him about his suit in that behalf laid out and expended whereof the said Daniel is convict as it appears of record. Therefore you are hereby commanded that of the goods and chattels land and tenements of the said Daniel in your bailiwick being you cause to be made the damages costs and charges and have you those sums before the Judges of our said Court to be held at the Court House in the town of Cumberland on the second Monday of October next to render unto the said Samuel the damages costs and charges aforesaid with the additional costs hereon hereof fail not at your peril and have you then

1194 and there this writ. And whereas also the said writ came to the hands of the said Sheriff and in pursuance of the command therein contained the said Sheriff laid the same upon the land and tenements goods and chattels in the schedule annexed to said writ and whereas also after due notice being given of the same the said Sheriff did on the 16" day of December in the year of our Lord eighteen forty nine expose to public sale, to the highest bidder the goods and chattels land and tenements mentioned in the said schedule annexed to the writ aforesaid and the herein named Ralph Thayer became the highest bidder and purchaser of two tracts or parcels of land to wit: one tract of land called "Bear Garden" containing five hundred and seventeen acres at and for the sum of Fifteen dollars also one tract of land called "Elder Spring" containing one hundred and eleven acres to and for the sum of Seventy three dollars and twenty six cents all of which said tracts or parcels of land are lying and being in Allegany County Maryland and hath since paid the said

purchase money to the said Sheriff and is now desirous of obtaining a title to the said tracts land before mentioned in consequence thereof.

Now this Indenture Witnesseth that for and in consideration of the premises of the sum of five dollars current money of the United States to the said John M. Carleton Sheriff as aforesaid in hand paid at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged the said John M. Carleton Sheriff as aforesaid hath granted bargained and sold and by these presents doth grant bargain and sell unto him the said Ralph Thayer his heirs and assigns all and singular the following tract or parcels of land lying and being in Allegany County Maryland to wit one tract of land called "Bear Garden" containing 517 acres also
1195 one tract of land called "Elder Spring" containing 111 acres as herein before mentioned with the appurtenances thereunto belonging.

To have and To Hold the said two mentioned tracts or parcels of land with the appurtenances unto the said Ralph Thayer his heirs and assigns forever to the proper use and behoof of him the said Ralph Thayer his heirs and assigns forever. In witness whereof the said John M. Carleton Sheriff as aforesaid hath hereunto set his hand and affixed his seal the day and year first herein before written.

JNO. M. CARLETON, [SEAL.]
Late Sheriff of Allegany County.

Signed Seale- & delivered in the presence of
WM. BOLE.
J. WRIGHT.

STATE OF MARYLAND,
Allegany County, To wit:

Be it remembered and it is hereby certified that on this twentieth day of April in the year of our Lord eighteen hundred and forty six before us the subscriber two Justices of the Peace in and for Allegany County and the State of Maryland aforesaid personally appears John M. Carleton Late Sheriff of Allegany County aforesaid who the undersigned or of their own knowledge satisfied is and hereby Certif*ys* him to be the person named or described as and professing to be a party to the aforegoing deed or instrument of writing and acknowledges the said indenture or instrument of writing to be his act and deed.

In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

WM. BOLE, *J. P.*
J. WRIGHT, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for
1196 Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. 1 folio 750 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 23″ day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. John M. Carleton Sheriff To Ralph Thayer. Exhibit Brown No. 32. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1197 EXHIBIT BROWN No. 33.

No. 148. Trials to April Court, 1858.

TRUMAN FAIRALL
vs.
RALPH THAYER Surviving Obligor of ANDREW RYLAND.

Be it remembered that heretofore to wit on the 8″ day of December eighteen hundred and fifty seven Truman Fairall by his attorney George A. Pearre prosecuted and sued forth out of the Circuit Court here the writ of the State of Maryland of subpœna directed to the Sheriff of Allegany County in the words and of the tenor following to wit

ALLEGANY COUNTY, *To wit:*

The State of Maryland to the Sheriff of Allegany County, Greeting:

We command you that you summon Ralph Thayer surviving obligor of Andrew Ryland to appear before the Judge of our next Circuit Court to be held at the Court House in the town of Cumberland in said County on the first Monday of January next to answer on action at the suit of Truman Fairall and have you then and there this writ;

Witness the Honorable Thomas Perry, Judge of the said Court the 12″ day of October 1857:

H. RESLEY, *Clerk.*

Issued the 8″ day of December 1857.

"PEARRE."

And the *fa*oresaid Truman Fairall by his attorney aforesaid on the day of prosecuting and sueing forth of the aforesaid writ, declared against the said Ralph surviving obligor of Andrew Ryland in plea aforesaid in the form following to wit:

1198 TRUMAN FAIRALL
vs.
RALPH THAYER, Surviving Obligor of ANDREW RYLAND.

Horace Resley, Clerk of the Circuit Court for Allegany County.

Issue in this case brought the 8" day of Dec. 1857.
GEORGE A. PEARRE,
Att'y for Plaintiff.

In the Circuit Court for Allegany County, Oct. Term, 1857.

ALLEGANY COUNTY:

1. Truman Fairall by George A. Pearre his attorney sues Ralph Thayer for that the said defendant with Andrew Ryland (now deceased) by then single bill now over due one the 20" day of October 1850 promised to pay the said plaintiff fifty dollars one day after date but neither the said defendant or said Andrew Ryland have paid the same now the administrator of the said Andrew Ryland since his death;

2. And for that also the said defendant and one Andrew Ryland now deceased on the 20" October 1850 by their other single bill now over due promised to pay the said plaintiff fifty dollars one day after date but neither said defendant or said Andrew Ryland paid the same nor the administrator of the said Ryland since his death;

3. And for that the said defendant and one Andrew Ryland now deceased on the 20" day October 1850 by their single bill now over due promised to pay to said plaintiff fifty dollars one day after date but neither the said defendant nor the said Andrew Ryland paid the same nor the administrator of the said Ryland since his death;

4. And for that also the said defendant and one Andrew Ryland now deceased on the 20" day of October 1850 by their other
1199 single bill now over due promised to pay to said plaintiff fifty dollars one day after date but neither the said defendant or the said Andrew Ryland paid the same nor the administrator of said Ryland since his death;

5. And for that also the said defendant and Andrew Ryland now deceased on the 20" day of October 1850 by their other single bill now over due promised to pay to the said plaintiff fifty dollars one day after date but neither the said defendant or Andrew Ryland have paid the same nor the administrator of the said Ryland since his death.

6. And for that also the said defendant and Andrew Ryland now deceased on the 20" day of October 1850 by their other single bill now over due promised to pay to the said plaintiff fifty dollars one day after date but neither the said defendant or Andrew Ryland have paid the same nor the administrator of the said Ryland since his death;

7. And for that also the said defendant and Andrew Ryland now deceased on the 20" day of October 1850 by their other single bill

now over due promises to pay to the said plaintiff fifty dollars one day after date but neither the said defendant or the said Andrew Ryland have paid the same nor the administrator of the said Ryland since his death.

8. And for that also the said defendant and one Andrew Ryland now deceased on the 20" day of October 1850 by their other single bill now over due promised to pay to the said plaintiff fifty dollars one day after date but neither the said defendant or the said Andrew Ryland have paid the same nor the administrator of the said Ryland since his death. The plaintiffs claims two thousand dollars.

GEORGE A. PEARRE,
Att'y for Plaintiff.

1200 On the foregoing declaration is an endorsement in the words and figures following to wit "The notes declared on are filed in 936 chancery."

A copy of which said declaration was made and delivered with the said writ to the Sheriff of the County aforesaid thereon indorsed "to be served on the defendant with the writ:

At which mentioned first Monday of October to wit the first Monday of January 1858 being the day of the return of the aforegoing writ comes into the circuit court here the said Truman Fairall by his attorney aforesaid and the Sheriff of Allegany County aforesaid to wit Hanson Willison gentleman to whom the foregoing writ was in form aforesaid directed make return thereof to the court here thus endorsed to wit "Summoned—H. Willison Sheriff."

And the said Ralph Thayer being called appears in court hereby Thomas Devecmon his attorney; And thereupon on motion of the said Truman Fairall by his attorney aforesaid it is ruled by the court here that the said Ralph Thayer answer to the declaration aforesaid of the said Truman Fairall in the plea aforesaid or judgment by the court here will be entered against him in default thereof;

Whereupon further proceeds and upon the premises aforesaid between the parties aforesaid by order of the court here thereon is continued until the second Monday of April next;

At which said second Monday of April to wit in the year last aforesaid come again into court here the said Truman Fairall by his attorney aforesaid and the said Ralph Thayer by his attorney aforesaid; And the said Ralph Thayer by his said Attorney come and says he cannot deny the action of the said Truman Fairall nor but that he the said Ralph Thayer did undertake and promise in manner and form as the said Truman Fairall above thereof against
1201 him hath complained nor but that the said Truman Fairall hath sustained damages by reason of the non-performance of the promises and undertakings in the said declaration mentioned to the sum of two thousand dollars as by the said declaration is supposed;

Whereupon the said Truman Fairall by his said attorneys prays judgment and his damages so acknowledged to be adjudged to him &c*t*.

Wherefore it is considered by the court here that the said Truman

Fairall recover against the said Ralph Thayer as well as the said sum two thousand dollars for his damages in form aforesaid acknowledged as the sum of seven dollars and eighty six and two thirds cents adjudged by the court here unto the said Truman Fairall for his costs and charges by him about his suit in this behalf expended; and the said Ralph Thayer in *memory* and that the said Truman Fairall have thereof his execution &c*t*.

Me*n*orandum; Judgment was entered in this case on the 23″ day of April 1858 for the damages laid in the declaration and cost of suit; the said damages to be released upon the payment of the sum of $400 with interest from the 21″ day of October 1850 and costs $7.82 2/3:

And whereupon the said Truman Fairall by his attorney aforesaid and the said Ralph Thayer by his attorney aforesaid on the 30″ day of April 1858 filed in the circuit court here papers and agreement in words following to wit;

1857 Feb'ry 4 "by T. Devecmon check $135.00 and John Wagner" note $40.00 on account your div. from Ralph Thayer trustee in Ryland real estate $175.00.

Received of Andrew Ryland by Mrs. Wright 30 dollars for 1 yrs. interest due me on a note of 400 dollars Truman Fairall Feb'y 16."

1202	Notes	A. $50.	20″ Oct. 1850 at 1 day.		B. 20″ Oct. 1850 at 1 day.		
		C. $50.	" " " " " .		D. $50.	20″ Oct. 1850 at 1 day.	
		E. $50.	20″ Oct. 1850 at 1 day.		F. $50.	20″ Oct. 1850 at 1 day.	
		G. $50.	" " " " "		H. $50.	" " " " "	

1857, Feb'ry 4″ credits by audit in ch'y case as paid to G. A. Pearre att'y for Fairall in money and note $175. 1852, Feb'y 16. Receipt filed among papers $30.00 we agree that the credit of $175.00 in this judgment shall be stricken out and in lieu thereof a credit of $101.95 entered.

GEORGE A. PEARRE,
Atty for Pl'ff.
THOMAS DEVECMON,
Att'y for Def't.

Feb'ry 23″, 1861.

[Written across the face:] Feb'y 23, 1861.

For which said damages costs and charges the said Ralph Thayer together with a certain John Frantz of Jas. and T. Frazee afterwards to wit, on the 15″ day of October 1858 before Andrew Gonder and O. H. W. Stall two Justices of the peace of the State of Maryland in and for Allegany County aforesaid did confess judgment to the said Truman Fairall according to the form of the act of assembly in such case made and provided which said confession so as aforesaid taken was by the said justices returned to the said Court here and is as follows to wit:

TRUMAN FAIRALL
vs.
RALPH THAYER.

No. 143 Trials to A. C. 1858 23" April Judgment for $2000.00 damages and costs damages to be released on the payment of $400.00 with interest from 21" day October 1850 & costs $7.83 2/3.
1852 Feb'ry 16" Release $30 per order filed, 1857 Feb'ry 4".
Release $175. per statement.

1203 True Copy.
Test:

H. RESLEY, *Clk.*

You Ralph Thayer John Frantz of Jos. and Theiman Frazee do confess judgment to Truman Fairall for the sum of $2,000., damages and costs damages to be released on the payment of $400.00 with interest from the 21" day of October 1850 & costs $7.86-⅔ which sum was recovered by the said Truman Fairall against the said Ralph Thayer on the 23" day of April 1858 in the Circuit Court for Allegany County the said damages and costs & charges to be levied of your goods and chattels lands and tenements for the use of the said Truman Fairall in case the Ralph Thayer shall not pay and satisfy the same to the said Truman Fairall the said damages costs and charges aforesaid recovered against him with the additional costs thereon the 12" day of April 1859;

Taken and acknowledged before the subscribers two Justices of the peace of the State of Maryland in and for Allegany County this 15" day of October 1858.

ANDREW GONDER, *J. P.*
O. H. W. STALL, *J. P.*

And afterwards to wit; on the 26" day of March in the year 1859 the said Truman Fairall sued forth out of the Circuit Court here the writ of the State of Maryland of *Fieri Facias* upon the judgment so as aforesaid rendered and confessed in the words following to wit;

[Allegany County, State of Maryland, Seal.]

STATE OF MARYLAND,
Allegany County, To wit:

The State of Maryland to the Sheriff of Allegany County, Greeting:

1204 Whereas at a Circuit Court begun and held at the Court House in the City of Cumberland in and for said County on the second Monday of April in the year of our Lord one thousand eight hundred and fifty eight a certain Truman Fairall by the judgment of the said Court recovered against a certain Ralph Thayer late of Allegany County yeoman as well the sum of four hundred dollars with interest from the 21" day of October 1850 current money a certain debt as the *as the* sum of two thousand dollars cur-

rent money for his damages which he had sustained as well by reason of the detention of that debt as for his costs and charges by him by his suit in that behalf laid out and expended whereof the said Ralpn Thayer is convict as it appeareth of record; for which said debt costs and charges aforesaid the said Ralph Thayer and a certain John Frantz of Joseph and Therman Frazee on the fifteenth day of October in the year eighteen hundred and fifty eight; before Andrew Gonder and O. H. W. Stall Esqrs. two of the Justices of the peace of the State of Maryland in and for Allegany County did confess judgment to the said Truman Fairall the said debt damages costs and charges aforesaid to be levied of their goods and chattels lands and tenements for the use of the said Truman Fairall in case the said Ralph Thayer should not pay and satisfy to the said Truman Fairall the said debt costs and damages and charges so as aforesaid recorded against him with the additional costs thereon; according to the act of assembly in such case made and provided which said Justices returned to the court whereof the said John Frantz of Joseph and Truman Farzee are convict as of record mifest;

Whereof you are commanded that of the goods and chattels lands and tenements of the said Ralph Thayer John Frantz of
1205 Joseph and Thruman Frazee in your bailiwick being you cause to be made the debt damages costs and charges aforesaid and have you the sums before the Judge of the Circuit Court for Allegany County to be held at the Court House in the City of Cumberland on the second Monday of April next to render unto the said Truman Fairall the debt damage costs and charges aforesaid with the additional costs hereon; Hereof fail not at your peril and have you then and there this writ;

Witness the Hon. Thomas Perry Judge of the Circuit Court for Allegany County the 3" day of January 1859.

HORACE RESLEY, *Clerk.*

Issued the 26" day of March 1859.

PEARRE.

(Duplicate)

And afterwards to wit on the — day of January 1863 Hanson Willison Esq. Sheriff of Allegany County aforesaid to whom the aforegoing writ of *Fiere Facias* was in form aforesaid directed *and* filed in the Court here the following petition to wit;

To the Honorable Daniel Weisel, Judge of the Circuit Court for Allegany County:

The petition of Hanson Willison late Sheriff respectfully represents to your honor that there was issued to him in the suit of Truman Fairall against Ralph Thayer and which is No. 143 J. A. C. 1858 superseded by John Frantz and William Browning a writ of *Fieri Facias* on the 26" day of March in the year eighteen hundred and fifty nine and which is No. 44 Judicials to April Term in the year eighteen hundred and fifty nine and that the said writ remains

unexecuted and which has been lost or mislaid and *your* petitioner your honor to direct the clerk to issue a duplicate of the same.

HANSON WILLISON,
Late Sheriff.

STATE OF MARYLAND,
Allegany County, To wit:

1206 I hereby Certify that on this 14" day of January eighteen hundred and sixty three before me the subscriber a Justice of the peac- of the State of Maryland in and for Allegany County personally appeared Hanson Willison and made oath on the Holy Evangely of Almighty God that the matters stated in the aforegoing petition are true.

ANDREW GONDER, *J. P.*

Whereupon the following order was passed by the Court here:

By the circuit Co-rt fo- Allegany County January Term 1863 It is ordered by the court on the within petition this 15" day of January 1863 that the *court* of this court issue a duplicate writ of the *fieri facias* within mentioned and as written and as within prayed from the docket entries on the Judicial docket referred to.

By order of the Court test.

H. RESLEY, *Clk.*

January 16" 1836.

Whereupon a duplicate of said writ of *Fiere Facias* was issued as directed in the form figures and words of the original which appears on pages 293 and 294 of this judgment Record Book;

At which said second Monday of April in the year eighteen hundred and fifty nine being the return day of said writ of *Fieri Facias* the Sheriff of Allegany County to wit Hanson Willison Esq. made no return of the same but afterwards the Sheriff made return of the same to the Court here in the words following to wit "Made and executed as per return annexed H. Willison Sheriff" the return annexed to the said writ of *Fieri Facias* so return as aforesaid is in the words following to wit;

1207 TRUMAN FAIRALL
vs.
RALPH THAYER.

No 143 Trials to A. C. 1858 23" April Judgment for $2000. damages and costs damages to be released on the payment of $400.00 with interest from the 21" day of October 1850 & costs $7.86-¾. 1852 Febry. 16" $30. per Rect. filed 1857 Febry. 4" Release $101.95 per agreement; Superseded Oct. 15, 1858 by John Frantz of Jos and Thruman Frazee Fifa to April Court 1859 No. 44 Judls. no return 1863 Jany. 16" Petition of Hanson Willison and order of court for duplicate fifa if land sold $8.00

True Copy.
Test:

H. RESLEY, *Clk.*

I hereby certify to the Honorable Judge within mentioned that by virtue of the above writ of *fieri facias* issued out of the Circuit Court for Allegany County and to me directed at the suit of Truman Fairall against the goods and chattels lands and tenements of Ralph Thayer John Frantz of Jos and Thruman Frazee one at the suit of Norris Cladwell & Co. against the goods and chattels lands and tenements of Ralph Thayer, Richard Fairall and William Browning I have seized and *leived* upon all the right title and interest of the said Ralph Thayer in and to the following property to wit, one tract of land called "Bear Garden" containing 517 acres of land and one tract called "Elk Spring" containing 111 acres of land more or less and which is more or less and which is more particularly described in a deed dated April 20 1846 from John M. Carleton Sheriff of Ralph Thayer and recorded in Liber H. B. No 1 folios 750 and 751 one of the land Records of Allegany County also (50) acres of land situated in Allegany County which is fully described
1208 in a deed for the same from Elizabeth Ringer to Ralph Thayer dated Oct. 30. 1859 and recorded in Liber H. R. No. 17 folio 599 one of the Land Records of said county also one town lot in Selbysport with a frame house one and half stories high and a Log house on it which was purchased by Ralph Thayer from Daniel Clammer also one acre lot with a two story dwelling house and stable adjoining Selbysport purchased by Ralph Thayer from Adam Sanbower and I whereupon advertise the said land and improvement thereon for sale to the highest bidder for cash to satisfy said executions and costs by advertisement published for more than twenty days in the Civilian and Telegraph a newspaper printed in the town of Cumberland and also set up for the same period of time at the court House door and two other the most public places in the county and in pursuance of said advertisement and at the time and place therein mentioned to wit at the front of St. Nicholas hotel in the town of Cumberland on the 19″ day of March 1863 at the hour of 11 o'clock A. M. I did then and there proceed to sell the land and improvements so advertised and sold the same as follows to wit; I sold all that tract of land called "Elder Spring" containing 111 acres also all that tract of land called "Bear Garden" containing 517 acres more or less which tracts are described in the advertisement which is made a part of my return to "Truman Fairall" he being then and there the highest bidder thereafter at and for the sum of four hundred and seventy five dollars current money which hath since been paid to me in cash also lot No. 2 fifty acres of land named in the advertisement and which if fully bounded and described in a deed for the same dated October 30″ 1859. from Elizabeth Ringer to Ralph Thayer and recorded in Liber H. R. No. 17 folio 599 one of the land records of Allegany County to Catherine A. Fuller she being the highest bidder thereof at
1209 and for the sum of twenty five dollars current money which hath since been paid to me in cash and lot No. 3 in said advertisement which is one town lot in Selbysport with a frame house one and half stories high and a log house on it which was purchased by Ralph Thayer from David Clammer to Richard Fair-

all he being then and there the highest bidder thereof at and for the sum of fifty two dollars which hath since been paid to me in Cash and also lot No. 4 on said advertisement which is one acre lot with a two story dwelling house and stable on it adjoining the town of Selbysport which was purchased by the said Ralph Thayer from Adam Sanbower to John Mitchell he being then and there the highest bidder therefor at and for the sum of one hundred and fifteen dollars which hath since been paid to me in cash which for sole amount in all to the sum of six hundred and sixty seven dollars and I further certify that the money received by me from the said purchasers of the said property was as aforesaid the sum of six hundred and sixty seven dollars from which deducting fees and costs and additional costs of land sold there remained a balance in my hands of the sum of six hundred and thirteen 71/100 dollars which I bring into your Honorable Court to be disposed of as your Honor may think fit to direct me

HANSON WILLISON, *Sheriff.*

Principal		$400.00
Int from Oct. 21" 1850 to March 19" 1863		297.86
	1578	697.86
Release of Feb. 16/52 & Feb. 4/57 & an. 22" 1863		147.73
		550.13
Costs & additional costs		9.36
		559.49
	error	3.00
		556.49
		475.00
		81.49

1209½ Annexed to said return the following printed advertisement Sheriffs Sale; By virtue of sundry writs of *fier facias* issued out of the Circuit Court for Allegany County one at the suit of Truman Fairall against the goods chattels and lands and tenements of Ralph Thayer of John Frantiz of Jos. and Thruman Frazee directed to Hanson Willison and one at the suit of Norris Caldwell & Co. against the goods chattels and lands and tenements of Ralph Thayer Richard Fairall and William Browning directed to Hanson Willison and at the suit of E. & S. Frey against the goods and chattels lands and tenements of Ralph Thayer. Richard Fairall and William Browning directed to Henry R. Atkinson also by virtue of sundry other writs directed unto to Henry R. Atkinson; we have seized and taken in executed in all the right title and interest of the said Ralph Thayer in and to the following property to wit one tract of land called "Bear Garden" containing 517 acres and one tract called "Elder Spring"

containing 111 acres and which are more particularly described in a deed dated April 20" 1846 from John M. Carl-eton Sheriff to Ralph Thayer and recorded in Liber H. B. No. 1 folio 750 and 751 one of the land records of Allegany County to which reference is given Also fifty acres of land bounded as follows on the south by the lots numbered 2987 and 2988 now owned by James Faulkner on the north by Sylvester Mattingly on the east by land claimed by Jacob Ryland on the west by the land claimed by Jno. Spurgeon these fifty acre- of land being included within the lines limits of lots 2989 and 2990 twelve and a half acres in lot No. 2989 fifty acres in all and described in a deed dated 30" October 1859 from Elizabeth Ringer to Ralph Thayer and recorded in Liber H. R. No. 17 folio 599.

Also one town lot in Selbysport with a frame house one
1210 and a half stories and a log house purchased by Ralph Thayer of David Clammer: Also one acre lot with a two story dwelling and a stable adjoining Selbysport purchased by Ralph Thayer of David Hoffman Jr.

And we hereby give notice that on Thursday the 19" day of March 1863 at 11 o'clock A. M. in front of the St. Nicholas Hotel in the city of Cumberland we will offer for sale to the highest bidder for cash all the right title and interest of said Ralph Thayer to the said property so seized and taken in execution to satisfy said claims and costs.

HANSON WILLISON,
H. R. ATKINSON,
Ex. Sheriff-.

STATE OF MARYLAND,
Allegany County, to wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Proceedings in above entitled case as recorded in Liber 8 folio 290 one of the Judgment Records of Said Allegany County.

In Testimony whereof I hereto subscribe my name and affix the seal of said Court this 9" day of August A. D. 1904—

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Proceedings in No 148 Trials April Court 1858 in the Circuit Court for Allegany County, Md. Fairall *vs.* Tayer Exhibit Brown No. 33. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia Filed Oct. 15, 1907.

1211 EXHIBIT BROWN No. 34.

[U. S. Stamp, 50 c.]

At the request of Truman Fairall the following Deed was recd. Feby. 10, 1864:

This Deed made this fifth day of January Eighteen hundred and sixty four by Hanson Willison late Sheriff of Allegany County of the one part, and Truman Fairall of said County of the other part,

Witnesseth That Whereas the said Hanson Willison late Sheriff as aforesaid, did on the 19" of March 1863, sell unto the said Truman Fairall, under and by virtue of an execution issued out of the Circuit Court for Allegany County upon a judgment in favor of the said Truman Fairall against Ralph Thayer & others, being No. 143 Trials to April C. 1858, the lands & property hereinafter mentioned. And whereas, the said Truman Fairall has fully paid the purchase money therefore as will appear by reference to the Sheriff Return in No. 44, Judicials, A. C. 1859 amounting to four hundred and seventy five dollars. Now therefore this Indenture Witnesseth that the said Hanson Willison late Sheriff as aforesaid in consideration of the premises doth, grant, bargain and sell unto the said Truman Fairall all those tracts or parcels of land lying and being in Allegany County, Maryland as follows to wit: "Bear Garden" containing five hundred and seventeen acres more or less also "Elder Spring" containing one hundred and eleven acres more or less. Which said last mentioned tract of lands is more particularly described in a deed from John M. Calton Sheriff to Ralph Thayer dated April 20th 1846 recorded in Liber H. B. No. 1 folio 750 &c. one of the Land Records of Allegany County.

To have and to Hold unto the said Truman Fairall his heirs and assigns forever.

1212 Witness my hand and seal.

HANSON WILLISON. [SEAL.]
Late Sheriff.

Witness:
ANDREW GONDER.

STATE OF MARYLAND,
Allegany County, sc:

I hereby certify that on this Fifth day of January 1864 before the subscriber a Justice of the Peace of the State of Maryland in and for Allegany county personally appeared Hanson Willison Late Sheriff and acknowledged the aforegoing instrument of writing to be his act and deed.

ANDREW GONDER, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County, State aforesaid, hereby certify that the foregoing is a true copy of Deed recorded in Liber 21 folio 465 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 23" day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Hanson Willison Sheriff To Truman Fairall. Exhibit Brown No. 34. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1213 EXHIBIT BROWN No. 35.

At the request of Samuel Forkner this Deed was recorded Nov. 11" 1864.

This Deed made this fifth day of November eighteen hundred and sixty four, between Truman Fairall and Mary P. Fairall his wife, of Allegany County in the State of Maryland of the one part and Samuel Forkner of the same County, and State of the other part.

Witnesseth that the said Truman Fairall and Mary P. as aforesaid in consideration of the sum of Seven hundred dollars to them paid doth grant unto Samuel Forkner of said County and State all that tract of Land called "Elder Spring" containing one hundred & eleven acres, more or less, which was convey- to the said Truman Fairall by Hanson Willison late Sheriff by his deed dated the fifth day of January eighteen hundred and sixty four. And recorded in Liber H. R. No. 21 folio 465 &c. said tract of Land being more particularly described in a deed from John M. Carleton Sheriff to Ralph Thayer dated April 20" 1846 recorded in Liber H. B. No. 1 folio 750 &c. of the Land records of Allegany County.

To Have and To Hold unto the said Samuel Forkner his heirs and assigns forever in fee simple.

Witness our hands and seals

TRUMAN FAIRALL. [SEAL.]
MARY P. FAIRALL. [SEAL.]

Test:
CHRISTIAN FIKE OF
JOHN CHRISTIAN MOSSER.

STATE OF MARYLAND,
Allegany County, To wit:

I hereby certify that on this fifth day of November in the year of our Lord, one Thousand eight hundred and sixty four. Before me subscriber a Justice of the Peace of the State of Maryland in and for the County aforesaid personally appeared Truman Fairall and Mary P. Fairall his wife and did each acknowledge the aforegoing to be their respective act.

ELI McMILLEN, *J. P.*

1214 STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid, hereby certify that the foregoing is a true copy of Deed recorded in Liber No. 22 folio 205 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 25" of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Truman Fairall *et ux* To Samuel Falkner. Exhibit Brown No. 35. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1215 EXHIBIT BROWN No. 36.

At the request of Martha J. Falkner, this Deed was recorded Aug. 2" 1894, at 5:30 o'clock P. M.

This Deed made this Tenth day of March in the year eighteen hundred and ninety four by and between Samuel Falkner, of Garrett County in the State of Maryland, of the first part and Martha J. Falkner his wife, of the County and State aforesaid of the second part.

Witnesseth that for and in consideration of the sum of three hundred dollars, current money to him in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, and the further consideration of the love and affection he bears her, the said party of the first part has given, granted, bargained and sold and by these presents do give, grant, bargain and sell unto the said party of the second part, and to her heirs and assigns forever, All of those pieces, parcels or tracts of land lying and being in Garrett County aforesaid and described as follows to wit:

One piece called Laurel Dale, consisting of Military Lots Nos. 1457, 1458, 1459 and 1460 and a piece of vacancy contiguous thereto and all containing Two hundred and nine acres and forty three perches and conveyed to Samuel Faulkner by the State of Maryland, as shown by patent dated August 27th 1891 and recorded in Liber W. R. H. No. 2 folio 367. And also another piece of land consisting of Military Lots Nos. 2987, 2988, 2989 and 2990 and known as the Samuel Sisler Farm, and more particularly described by deed from John Falkner and others to Samuel Falkner, dated December 10th, 1884, recorded May 4, 1885 in Liber W. H. T. No. 10 folio 252 &c, one of the Land records of Garrett

1216 And also another tract of land called "Elder Spring", and containing one hundred and eleven acres *acres* more or less, and which is more fully described by reference to deed from Truman Fairall and Mary P. Fairall to Samuel Falkner, dated November fifth 1864, recorded November 11" 1864 in Liber H. R. No. 22, folio 205 one of the Land Records of Allegany County.

Together with all and singular the rights, privileges and improvements on said pieces, parcels or tracts of land. And the said party of the first part hereby covenants to warrant *secially* the said pieces, parcels or tracts of land hereby bargained and sold.

Witness my hand and seal, this the tenth day of March in the year of eighteen hundred and ninety four.

SAMUEL FALKNNER. [SEAL.]

Test:
WM. FREDERICK.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify, that on this 16th day of March 1894, before the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County personally appeared, Samuel Falkner and acknowledged the foregoing deed to be his act.

WM. FREDERICK, *J. P.*

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland do hereby certify that the above and aforegoing is a true copy taken from Liber E. Z. T. No. 24, folios 468 &c. one of the Land Records of Garrett County Maryland.

1217 In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court for Garrett County, at Oakland, this 23-d day of July, A. D. 1904.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Certified Copy Deed from Samuel Falkner To Martha J. Falkner. Exhibit Brown No. 36. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1218 EXHIBIT BROWN No. 37.

At the request of John Kelley this deed was recorded the 22" January 1833.

This Indenture made this fourteenth day of January in the year of our Lord one thousand eight hundred and thirty three between William W. Hoye and Mary his wife of Allegany County and State of Maryland of the one part and John Kelley of the County and State aforesaid of the other part.

Witnesseth that the said William W. Hoye and Mary his wife in consideration of the sum of Seventy five dollars lawful money of the United States to them in hand paid by the said John Kelley before the sealing and delivery of these presents the receipt whereof they the said William W. Hoye and Mary his wife doth hereby acknowledge and from every part and parcel thereof doth hereby acquit exonerate and discharge the said John Kelley his heirs executors and administrators they the said William W. Hoye and Mary his wife hath granted bargained sold al*e*ined enfeoffed and confirmed and by these presents doth grant bargain sell al*e*in enfeoff and confirm unto the said John Kelley his Heirs and assigns a part of a tract of land called "Elder Spring" beginning at the end of the second line of the original tract and running thence North Seventy nine degrees, West thirty nine perches, South Sixty degrees, West one hundred and twenty eight perches, South Eighty eight degrees, East Sixty nine perches to the end of the ninety eight perches, on

the first line of the original tract and with it North six degrees, east forty eight perches North twenty degrees, West Eighty perches, to the beginning containing fifty acres of land together with all and singular the buildings improvements, woods, ways, waters,
1219 water courses, rights liberty*s*, privileges hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions and remainders, rents, issues and profits thereof and all the estate right and interest whatsoever of him the said William W. Hoye & Mary his wife both at law and in equity of into and out of the said tract or parcel of land and premises hereby bargained and sold or meant or mentioned or intended hereby so to be and convey or any part and parcel thereof. To have and to hold the said tract or parcel of land so as aforesaid described Land together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold or meant or mentioned or intended hereby so to be and every part and parcel thereof with the*re* and every of their appurtenances unto the said John Kelley his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said William W. Hoye, and Mary his wife for themselves their heirs executors & administrators doth hereby covenant grant promise and agree to & with the said John Kelley his heirs executors administrators or assigns that he the said William W. Hoye and Mary his wife & their heirs the said tract or parcel of land and premises hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said John Kelley his heirs and assigns against him the said William W. Hoye and Mary his wife and their heirs & against all and every person or persons whatsoever claiming or to claim any right title or interest in and to same or any part thereof shall and will hereafter warrant and forever defend by these presents.

1220 W. W. HOYE. [SEAL.]
MARY HOYE. [SEAL.]

Signed sealed and delivered in presence of
JACOB CLAMMER.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

On this fourteenth day of January in the year of our Lord one thousand eight hundred and thirty three personally appeared William W. Hoye of Allegany County being the party grantor above named before us the subscribers two Justices of the peace and acknowledges the within Deed or instrument of writing to be his act and deed and the land and premises therein mentioned and thereby bargained and sold to be the right and estate of the within named John Kelley party grantor also therein named his heirs and assigns forever according to the purport true intent and meaning of the said deed or instrument of writing and the acts of assembly in such case made and provided and now at the same time also personally

appears Mary Hoye wife of the said William W. Hoye before two Justices of the peace and acknowledged the said Deed or instrument of writing to be *his* act & deed and the land and premises therein mentioned to be the right and estate of the within named John Kelley his heirs and assigns forever and the said Mary Hoye being by us privately examined apart from and out of the hearing of her husband whether she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure acknowledges that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure.

1221 Taken and certified the day and year above written.

JOSEPH CLAMMER.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of deed recorded in Liber No. Q folio 208 one of the Land Records of the said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 30" day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. W. W. Hoye *et ux.* To John Kelley. Exhibit Brown No. 37. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1222 EXHIBIT BROWN No. 38.

At the request of John Ervin this deed was recorded August 21 1837.

This Indenture made this first day of July in the year of our Lord one thousand eight hundred and thirty seven between John Kelley and Cat*eh*rine his wife of Allegany County and State of Maryland of the one part and John Ervin of the County & State aforesaid of the other part.

Witnesseth that the said John Kelley and Catherine his wife in consideration of the sum of Seventy Five Dollars to him in hand paid by the said John Ervine before the sealing and delivery of these presents the receipt whereof they the said John Kelley and Cathrine his wife doth hereby acknowledge and from every part and parcel thereof doth hereby acquit exonerate and discharge the said John Ervine his heirs executors and administrators they the said John Kelley and Catherine his wife hath granted bargained

and sold, aliened enfoeffed and confirmed and by these presents doth grant bargain sell alien enfoeff and confirmed unto the said John Ervin his heirs and assigns a part of a tract of land called "Elder Spring" beginning at the end of the second line of the original tract and running thence North seventy nine degrees West thirty nine perches South sixty degrees west one hundred and thirty eight perches south eighty eight degrees East sixty nine perches to the end of ninety eight perches on the first line of original tract and with it North six degrees East forty eight perches North twenty degrees west eighty perches to the beginning containing fifty acres of land together with all and singular the buildings improvements woods ways waters water courses rights liberties privileges appurtenances whatsoever thereunto belonging or in any wise ap-
1223 pertaining and the reversions intent & remainders rents issue & profits thereof and all the estate rights and whatsoever of them the said John Kelley & Catherine his wife both at law and equity of into and out of the said tract or parcel of land and premises hereby bargained and sold or meant or mentioned or intended hereby so to be and every part and parcel thereof.

To have and to hold the said tract or parcel of land so as aforesaid described together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold or meant or mentioned or intended hereby so to be and every part and parcel thereof with their and every of their appurtenances unto the said John Ervin his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said John Kelley and Catherine his wife for themselves their heirs executors and administrators doth hereby covenant grant promise and agree to and with the said John Ervin his heirs executors administrators or assigns that he the said John Kelley and Catherine his wife and there heirs that said tract or parcel of land and premises hereby granted bargained, and sold and every part & parcel thereof with the appurtenances thereunto belonging to him the said John Ervin his heirs and assigns them the said John Kelley and Catherine his wife and their heirs and against all and every person or persons whatsoever claiming or to claim any right title or interest in and to the same in every part thereof shall and will hereafter warrant and forever defend by these present.

1224 JOHN KELLEY. [SEAL.]
CATHERINE KELLEY. [SEAL.]

Signed, sealed and delivered in presence of
JOHN FRANTZ.
JACOB CLAMMER.

STATE OF MARYLAND,
Allegany County, To wit:

On this first day of July in the year of our Lord one thousand eight hundred and thirty seven personally appears John Kelley of Allegany County being the party grantor above named before us

the subscribers two Justices of the peace and acknowledged the within deed or instrument of writing to be his act and deed and the Land and premises therein mentioned and thereby bargained and sold to be the right & estate of the within named John Ervin party grantee also therein named his heirs & assigns forever according to the purport true intent and meaning *to the purport true intent and meaning* of the said deed and the acts of assembly in such case made and provided and now at the same time also personally appears Catherine Kelley wife of the said John Kelley before us two Justices of the peace and acknowledges the said deed to be her act and the land and premises therein mentioned to be the right and estate of the within named John Ervin his heirs and assigns forever and the said Catherine Kelley being by us privately examined apart from and out of the hearing of her husband whether she doth make her acknowledgement of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure acknowledges that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure.

1225 Taken and certified the day and year above written.

JOHN FRANTZ.
JACOB CLAMMER.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County hereby certify that the foregoing is a true copy of deed recorded in Liber No. T folio 301 one of the Land Records of the said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 3" day of August 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. John Kelley *et ux.* To John Ervin. Exhibit Brown No. 38. Supreme Court U. S. No. 1. Original, Oct. Term 1907. Maryland *v.* West Virginia Filed Oct. 15, 1907.

1226 EXHIBIT BROWN No. 39.

At the request of Henry Thomas this Deed was recorded April 5" 1841.

This Indenture made this 25" day of January in the year of our Lord Eighteen hundred and forty one between John Ervin and Julian his wife of Allegany County and State of Maryland of the one part and Henry Thomas of the County and State aforesaid of the other.

Witnesseth that the said John Ervin and Julian his wife in consideration of the sum Seventy Five Dollars to them in Hand paid by the said Henry Thomas before the sealing and delivery of these

presents the receipt whereof they the said John & Julian Ervin doth hereby acknowledge and from every part and parcel thereof doth hereby acquit exonerate and discharge the said Henry Thomas his *heirs* executors and administrators they the said John and Julian Ervin hath granted bargained sold *alleand* enfeoffe- and confirm- and by these presents doth grant bargain and sell alein enfeoffe and confirm unto the said Henry Thomas his heirs and assigns a part of a tract of land called "Elder Spring" beginning at the end of the second line of the original tract and running thence North Seventy nine degrees, West thirty nine perches south Sixty degrees, West one hundred and twenty eight perches, South Eighty eight degrees, East Seventy nine perches to the end of ninety eight perches on the first line of the original tract and with it North Six degrees, East forty eight perches, North twenty degrees, West eighty perches to the beginning containing fifty acres of land together with all and singular the buildings improvements woods ways water water course rights libert*y*es privileges hereditaments and appurtenances whatso-
1227 ever thereunto belonging or in any wise appertaining and the reversions and remainders rents issues and profits thereof and all the estate right and *intrust* whatsoever of them the said John & Julian Ervin both at law and in equity of into and out of the said tract or parcel of land and premises hereby bargained and sold or meant mentioned or intended hereby to *to* be and every part and parcel thereof to have and to hold the said tract or parcel of land so as aforesaid described together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold or meant or mentioned or intended hereby so to be and every part and parcel thereof with their and every of their appertenances unto the said Henry Thomas his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said John & Julian Ervin for themselves the*ir* heirs executors and administrators doth hereby covenant grant promise and agree to and with the — Henry Thomas his heirs executors administrators or assigns that they the said John & Julian Ervin and their heirs the said tract or parcel of land and premise- hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said Henry Thomas his heirs and assigns against them the said Julian Ervin and their heirs and against all and every person or persons whatsoever claiming or to claim any right title or interest in and to the same or any part thereof shall and will hereafter warrant and forever defend by these presents.

his
JOHN x ERVIN. [SEAL.]
mark.
her
JULIAN x ERVIN. [SEAL.]
mark.

Signed sealed and delivered in presen*ts* of
JOHN FRANTZ OF JO.
JAMES ROBINSON.

1228 MARYLAND, *Allegany County, To wit:*

On this twenty fifth day of January in the year of our Lord eighteen hundred and forty one personally appears John and Julian Ervin being the party grantors within named before us two Justices of the peace and acknowledged the within deed to be their act and deed and the land — premises therein mentioned to be the right and estate of the within named Henry Thomas party grantee also therein named his heirs and assigns forever according to the true intent of the said deed and the act of assembly in such case made and provided and the said Julian Ervin being by us first examined apart from and out of the hearing of her husband whether she doth make her acknowledgments of the same willingly and freely and without being indu*st* thereto by fear or threats of or ill usage by her husband or fear of his displeasure acknowledged that she doth make her acknowledgment freely and without being indu*st* thereto taken and *certified* the day and year above written.

JOHN FRANTZ OF JOS.
JAMES ROBINSON.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. B. B. folio 345 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 28″ day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

1229 Endorsed: Certified Copy of Deed. John Ervin *et ux.* To Henry Thomas. Exhibit Brown No. 39. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1230 EXHIBIT BROWN No. 40.

At the request of John & Geo. Evans, the following deed was recorded May 19″ 1853:

This indenture, made this seventeenth day of May in the year of our Lord One thousand eight hundred and fifty three, between Henry Thomas Senr., and Rebecca Thomas his wife, of the State of Maryland and Allegany County of the one part and John and George Evans of the State and County aforesaid of the other part, Witnesseth:

That for and in consideration of the sum of three hundred dollars, current money of the United States, by the said John and George Evans in hand paid at and before the sealing and delivery of these presents, the receipt of which the said Henry Thomas, Sen., doth hereby acknowledge, The said Henry Thomas, Sen., and Rebecca Thomas his wife, hath bargained and sold, aliened and enfeoffed and

by these presents doth give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the said John and George Evans their heirs and assigns, a part of a tract of land called Elder Spring.

Beginning at the end of the second line of the original tract and running thence North seventy nine degrees West thirty nine perches South sixty degrees West one hundred and twenty nine perches, South eighty eight degrees East sixty nine perches to the end of ninety eight perches on the first line of the original tract and with it North six degrees East forty eight perches, North twenty degrees West eighty perches to the beginning. Containing fifty acres of land, Together with all and singular the buildings, improvements, woods, ways, waters, water Courses, right, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof, and all the estate right and interest whatsoever of
1231 them the said Henry Thomas Sen., and Rebecca Thomas his wife, both at law and in Equity of in and out of the said tract or parcel of land and premises hereby bargained and sold or meant, mentioned or intended hereby so to be, and every or any part and parcel thereof.

To Have and to hold the said tract or parcel of land so as aforesaid, together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold, meant, mentioned or intended hereby so to be and every part and parcel thereof with their and every of their appurtenances unto the said John and George Evans, their heirs and assigns forever, and to and for no other use, intent or purpose whatsoever, and the said Henry Thomas Sen., and Rebecca Thomas, his wife, for themselves their heirs, executors and administrators do hereby covenant, grant, promise and agree to and with the said John and George Evans their heirs, executor-, administrators or assigns that the said Henry Thomas, Sen., and Rebecca Thomas his wife and their heirs that said tract or parcel of land and premises hereby granted, bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to them the said John and George Evans, their heirs and assigns against them the said Henry Thomas Sen., and Rebecca Thomas his wife and their heirs and against all and every person or persons whatsoever claiming or to claim any right, title or interest in and to the same or any part thereof shall and will hereafter warrant and forever defend by these presents:

In Testimony Whereof the said Henry Thomas, Sen., and Rebecca Thomas his wife, has hereunto set their hands and seals on the day and year above written.

his
HENRY x THOMAS. [SEAL.]
mark

her
REBECCA x THOMAS. [SEAL.]
mark

Signed, Sealed and delivered in presence of
JOHN P. LOUDERMILK.
JAMES EDWARDS.

1232 MARYLAND, *Allegany County, To wit:*

On this seventeenth day of May in the year of our Lord eighteen hundred and fifty three, personally appeared before the subscribers two Justices of the Peace in and for the State of Maryland, in and for Allegany County, Henry Thomas Sen., and Rebecca Thomas his wife, they being known to us to be the persons who are named and described as and professing to be the parties to the foregoing deed or indenture and do severally acknowledge the said indenture or instrument of writing to be their respective act and deed, The said Rebecca Thomas having signed and sealed said Indenture before us out of the presence and hearing of her husband, and the said Rebecca Thomas being by us examined out of the presence and hearing of her husband whether she doth execute and acknowledge the same freely and voluntarily and without being induced to do so by fear or threats of or ill usage by her husband or by fear of his displeasure, declareth and saieth she doth. In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

JOHN P. LAUDERMILK, *J. P.*
JAMES EDWARDS, *J. P.*

Received this seventeenth day of May 1853 of John and George Evans Three Hundred dollars, the full consideration mentioned in said deed received by me.

his
HENRY x THOMAS, SEN.
mark

Attest:
J. P. LAUDERMILK.

Received one dollar the State of Maryland Stamp tax on this Deed when offered for Record.

H. RESLEY, *Clerk.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing is a true copy of Deed Recorded in Liber No. 10, folio 333 &c.,
1233 of the Land Records of said Allegany County.

In Testimony Whereof I hereunto subscribe my name and affix the Seal of said Circuit Court this 14" day of September, A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Henry Thomas and Rebecca Thomas his wife To John and George Evans. Certified Copy of Deed. Exhibit Brown No. 40. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1234 EXHIBIT BROWN No. 41.

At the request of Amos Thomas this Deed was recorded May 3" 1860.

This Indenture made this tenth day of April in the year of our Lord one thousand eight hundred and sixty, John and George G. Evans and Susannah Evans wife of John G. Evans of Maryland and Allegany County of the one part and Amos Thomas of the other part of the State of Maryland and County aforesaid.

Witnesseth that for and in consideration of the sum of Four Hundred dollars current money of the United States by the said Amos Thomas at the sealing and delivery of these presents the receipt of which the said John G. and George G. Evans doth hereby acknowledge the said George *George* G. Evans John G. Evans and Susannah Evans wife of the said John G. Evans hath bargained and sold aliened and enfeoffed and by these presents doth grant bargain and sell alien enfeoff release convey and confirm unto the said Amos Thomas their heirs and assigns a part of a tract of land called "Elder Spring" beginning at the end of the second line of the Original tract and running thence North seventy nine degrees, West thirty nine perches, South Sixty degrees, West one hundred and twenty nine perches, South eighty eight degrees, East sixty nine perches, to the end of ninety eight perches on the first line of Original tract and with it North six degrees, East forty eight perches, North twenty degrees, West eighty perches to the beginning containing sixty acres of land together with all and singular the buildings improvements woods ways water courses rights liberties privileges hereditaments appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions remainders rents issues and profits thereof and all the estate right and interest whatsoever of them the said John G. and George G. Evans and Susannah Evans wife of John

1235 G. Evans both at law and in equity of in and out of the said tract or parcel of land and premises hereby bargained and sold or meant mentioned or intended hereby so to be and every or any part and parcel thereof.

To have and to hold the said tract or parcel of land so as aforesaid together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold meant and mentioned or intended hereby so to be and every part or parcel thereof with their and every of their appurtenances unto the said Amos Thomas their heirs and assigns forever and to or for no other use intent or purpose whatsoever said George G. Evans John G. Evans and Susannah Evans wife of the said John Evans themselves their heirs executors and administrators do hereby covenant grant promise and agree to and with the said Amos Thomas their heirs executors administrators and or assigns that the said John G. and George G. Evans and Susannah Evans his wife and their heirs that said tract or parcel of land and premises hereby granted bargained or sold and every part or parcel thereof with appurtenances thereunto belonging to him the

said Amos Thomas his heirs and assigns the said John G. and George G. Evans and Susannah Evans wife of John G. Evans and their heirs and against all and every person or persons whatsoever claiming or to claim any right title or interest in and to the same or any part thereof shall and will hereafter warrant and forever warrant and defend by these presents.

In testimony whereof the said John G. and George G. Evans and Susannah Evans wife of John G. Evans has hereunto set their hands and seals on the day and year above mentioned.

her
SUSANNAH x EVANS. [SEAL.]
mark.
GEORGE G. EVANS. [SEAL.]
JOHN GEPERHY EVANS. [SEAL.]

Signed sealed in the presence -f
HENRY THOMAS.
JOS. L. FORSYTH.

1236 STATE OF MARYLAND,
Allegany County, To wit:

I hereby certify that on this 10" of April in the year 1860 before the subscriber a Justice of the Peace in and for the said county personally appeared George G. Evans John G. Evans and Susannah Evans his wife and acknowledged the annexed to be their act.

G. A. FEARER, *J. P.*

$400. ALLEGANY COUNTY, *April* 10", 1860.

Received from Amos Thomas the sum of four hundred dollars being the consideration expressed to be paid in the foregoing indenture.

GEORGE G. EVANS.
JOHN G. EVANS.

Witness:
JOS. L. FORSYTH.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. 19 folio 336 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 27" day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. George G. Evans *et al.* To Amos Thomas Exhibit Brown No. 41. Supreme Court U. S. No. 1. Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1237 EXHIBIT BROWN No. 42.

[U. S. 50 c't Stamp.]

At the request of Daniel Bitner This Deed was recorded Aug. 7" 1863.

This Deed made this twenty sixt- of February in the year of our Lord one thousand eight hundred *eight hundred* and sixty three between Amos Thomas and his wife Marier of the State of Maryland and in Allegany County of the one part and Daniel of the other part of the State of Maryland and County of aforesaid.

Witnesseth: that for and in consideration of the sum of one hundred dollars current money of the United States by the said Daniel Bitner at the sealing and delivery of these presents the receipt of which the said Amos Thomas and his doth hereby acknowledge*d* the said Amos Thomas and his wife hath bargained and sold aliened and enfeoffed and by these presents doth grant bargain and sell alien enfeoff release convey and confirm unto the said Daniel Bitner the*re* heirs and assigns a part of a tract of land called Elder Spring beginning at the end of the second line of the original tract and running thence North seventy nine degrees, South 44, East 88 perches to a stone 56 West 36 to a stone, South 18 West 62½ perches to a stone at the edge of a brook West 24 North 87½, West 81 perches, North 5 East 183 perches South 73 East 51 to the beginning, containing ninety two acres more or less of land together with all and singular the buildings improvements woods ways water courses rights liber*teys* privileges hereditaments appertaining and the remainders rents issue*d* and *profits* thereof and all the estate rights and interest whatsoever of them the said Daniel Bitner and his wife Feele Bitner both at law and in equity of in and out of the said tract or parcel of land and premises hereby so to be and *every* or any part and parcel thereof to have and to hold the said tract or parcel thereof and

1238 to hold the said tract or parcel land so as *aforesaid* together with the buildings and appurtenances and all and singular other the premises *hereby* bargained and sold *ment* and mentioned or intended hereby so to be and *every* part and parcel thereof with the*ir* and every of their appurtenances unto the said Daniel Bitner & his wife their heirs and assigns forever and to and for no other use intent or purpose whatsoever the said Amos Thomas and wife themselves their heirs executors and administrators do hereby covenant grant promise and agree to and with the said Daniel Bitner and wife their heirs executors administrators & or assigns that the said Amos Thomas Marier his wife & their heirs that said tract or parcel of land and premises *hereby* granted bargained or sold and every part and parcel thereof with appurtenances thereunto belonging to him the said Daniel Bitner his heirs and assigns against the said Amos Thomas & wife their heirs and against all and every person or persons whatsoever claiming or to claim any right title, or interest in and to the same or any part thereof shall and will hereafter warrant

and forever warrant and defend by these presents, in testimony whereof the said Amos Thomas & wife has hereunto set their hands and seals on the day and year above mentioned.

AMOS THOMAS. [SEAL.]
MARIAH THOMAS. [SEAL.]

Signed sealed & delivered in presence of
Attest:
C. W. FRIEND.

STATE OF MARYLAND,
Allegany County, To wit:

I hereby certify that on this twenty sixth of February in the year 1863 before the subscriber a Justice of the Peace in and for said County personally *appeared* Amos Thomas and Marier 1239 Thomas his wife and acknowledged the annex*t* deed to be their act.

THOMAS B. FRANTZ, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. 20 folio 776 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 27″ day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed Amos Thomas *et ux.* To Daniel Bitner Exhibit Brown No. 42. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1240 EXHIBIT BROWN No. 43.

[U. 50 cts. S.
U. Stamp. S.]

At the request of Jeremiah Bitner this Deed was recorded December 29/68.

This Deed made this 18″ day of September in the year 1866 by Daniel Bitner and Phoebe Bitner his wife of the State of Maryland and Allegany County of the one part & Jeremiah Bitner of the State and County aforesaid of the other part Witnesseth That Daniel Bitner and Phoebe his wife for and in consideration of the sum of Five Hundred dollars hath bargained and sold unto Jeremiah Bitner all that tract or parcel of land,

Known as part of "Elder Spring" beginning at the second line of the original tract & running thence N. 6°, E. 35-¾ P. to a stone thence S. 44°, E. 88 Poles to a Stone S. 6°, W. 36 Poles to a stone

S. 18°, W. 62-½ P. to a stone standing at the edge of a Brook W. 20° N. 87-½ W. 81 poles N. 5°, E. 138 P. thence S. 73°, E. 51 W. to the beginning containing Ninety Two Acres more or less together with all and singular the building ways water water courses rights & privileges unto the said Jeremiah Bitner his heirs forever and the said Daniel Bitner & Phoebe his wife doth warrant and forever defend against themselves there heirs and all persons whomsoever in witness whereof the said Daniel Bitner & Phoebe Bitner have hereunto set there hands and seals the day and year above written.

his
DANIEL x BITNER. [SEAL.]
mark
her
PHOEBE x BITNER. [SEAL.]
mark

Attest:
J. P. LOUDERMILK.

1241 MARYLAND, *Allegany County, To wit:*

Personally appeared before me the subscriber a Justice of the Peace of the State of Maryland in and for said County Daniel Bitner and Phoebe Bitner and acknowledged the within deed to be their act for the purpose therein mentioned.

Witness my hand and seal this 18" Sept. 1866.

J. P. LOUDERMILK, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the aforegoing is a true copy of Deed recorded in Liber No. 28 folio 385 one of the Land Records of said Allegany County.

In Testimony whereof I hereto subscribed my name and affix the seal of said Allegany County this 26" day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Daniel Bitner *et ux.* To Jeremiah Bitner Exhibit Brown No. 43. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1242 EXHIBIT BROWN No. 44.

At the request of James Ervin this deed was Rec'd. the 20" August 1832.

This Indenture made this ninth day of June in the year of our Lord one thousand eight hundred and thirty two between William W. Hoye of Allegany County in the State of Maryland of the one part and James Ervin of the County and State aforesaid of the other part.

Witnesseth that the said William W. Hoye for and in consideration of the sum of Seventy five dollars current money of the United States to him in hand paid by the said James Ervin before the sealing and delivery of these presents the receipt whereof he the said William W. Hoye doth hereby acknowledge and from every part and parcel thereof doth hereby acquit exonerate and discharge the said William W. Hoye hath granted bargained sold aliened enfoeffed and confirmed and by these presents doth grant bargain sell alien enfeoff unto the said James Ervin his heirs and assigns part of tract of Land called Elder Spring beginning at the end of the second line of the original tract and running thence with North Seven degrees, East one hundred and seventy three perches, West fifty seven perches, then South Six degrees, West one hundred and Sixty two perches, then by a straight line to the beginning containing fifty Acres of land together with all & singular the buildings improvements wood, ways, water, water courses, rights, libertys, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions and remainders rents, issues and profits thereof and the estate right title and interest whatsoever of him the said William W. Hoye both at law & in equity of in to and out of the said tract or parcel of land and premises hereby bargained and sold or meant or mentioned
1243 or intended hereby so to be and convey or any part & parcel thereof.

To have and to hold the said tract or parcel of land so as aforesaid described and together with the buildings and appurtenances and all and singular the premises hereby bargained and sold or meant mentioned or intended hereby so to be every part and parcel thereof with their and every of their appurtenances unto the said James Ervin his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said William W. Hoye for himself his heirs executors and administrators doth hereby covenant grant promise & agree to and with the said James Ervin his heirs executors administrators or assigns that he the said William W. Hoye and his heirs the said tract parcel of land and premises hereby granted bargained & sold and every part and parcel thereof woth the appurtenances thereunto belonging to him the said James Ervin his heirs and assigns against him the said William W. Hoye and his heirs & against all and every person or persons whatsoever claiming or to claim right title or interest in and to the same or any part thereof shall and will hereafter warrant and forever defend by these presents.

W. W. HOYE. [SEAL.]

Signed sealed and delivered in the presence of
Test:

PETER McCLARY.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

On the ninth day of June in the year of our Lord one thousand eight hundred and thirty two personally appeared William W. Hoye of Allegany County being the party grantor above named before the subscribers two Justices of the peace and acknowledges the
1244 within deed or instrument of writing to be his act and deed and the lands and premises therein mentioned & thereby bargained and sold to be the right and estate of the within named James Ervin party grantor also therein his heirs and assigns forever according to the purport true intent and meaning of the said deed or instrument of writing and the acts of assembly in such case made and provided and now at the same time also personally appeared Mary Hoye wife of the said William W. Hoye before us two Justices of the peace and acknowledged the said deed or instrument of writing to be her act & deed and the Lands and premises therein mentioned to be the right and estate of the within James Ervin his heirs and assigns forever and the said Mary Hoye being by us privately examined apart from and out of the hearing of her husband whether she doth make her acknowledgement of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure acknowledges that she doth make her acknowledgement of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure taken and certified the day and year above written.

MARY HOYE.

Acknowledged Before
PETER McCLARY.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County state aforesaid hereby certify that the foregoing is a
1245 true copy of deed recorded in Liber No. Q folio 98 one of the land records of the said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of the said Allegany County this 1″ day of August 1904.
[SEAL.]

J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. W. W. Hoye *et ux* To James Ervin. Exhibit Brown No. 44. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1246 EXHIBIT BROWN No. 45.

At the request of Michael Chriss this Deed was recorded the 7" day of September 1836.

This Indenture made this second day of April in the year of our Lord one thousand eight hundred and thirty six between James Ervin and Mary Ann his wife of Allegany County and State of Maryland of the one part and Michael Chriss of Preston County and State of Virginia of the other part.

Witnesseth that the said James Ervin for and in consideration of the sum of Two Hundred Dollars to him in hand paid by the said Michael Chriss before the sealing and delivery of these presents the receipt whereof is hereby acknowledged hath granted bargained sold aleined enfeoffed and confirmed and by these presents doth grant bargain sell alein enfeoff and confirm unto the said Michael Chriss his heirs and assigns part or parcel of a tract of land called "Elder Spring" situate and being in Allegany County and State of Maryland beginning at the end of the second line of the original tract and running thence with the original line North Seventy degrees, East one hundred and seventy three perches West fifty seven perches, then South six degrees, West one hundred and sixty two perches, then by a straight line to the beginning containing fifty acres of land together with all and singular the buildings improvements woods ways water water courses rights libertys privileges hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions and remainders rents issues and profits thereof and all the estate right title and interest whatsoever of him the said James Ervin and Mary Ann his wife both at law and in equity of into and out of the said tract or parcel of land and premises hereby bargained and sold or meant or
1247 mentioned or intended hereby so to be and every or any parcel and part thereof.

To have and to hold the said tract or parcel of land so as aforesaid described called "Elder Spring" together with the buildings and appurtenances and all and singular other the premises hereto bargained and sold or meant or mentioned or intended hereby so to be and every part and parcel thereof with their and every of their appurtenances unto the said Michael Chriss his heirs and assigns forever and to and for no other use intent or purpose whatsoever.

And the said James Ervin and Mary Ann his wife for himself his heirs executors and administrators doth hereby covenant grant promise and agree to and with the said Michael Chriss his heirs executors administrators or assigns that he the said James Ervin and his heirs the said tract or parcel of land and premises hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said Michael Chriss his heirs and asigns against him the said James Ervin and Mary Ann his wife and his heirs and against all and every person or persons what-

soever claiming or to claim any right title or interest in and to the same or any part thereof shall and will hereafter warrant and for defend by these presents.

In witness whereof the said James Erwin and Mary Ann his wife hath hereunto subscribed his name and affixed his seal the day and year first before written.

JAMES ERVIN. [SEAL.]
her
MARY ANN x ERVIN. [SEAL.]
mark

Signed sealed and delivered in presence of us
PETER M'CLERY.
JACOB CLAMMER.

1248 MARYLAND, *Allegany County, To wit·*

On this second day of April in the year of our Lord eighteen hundred and thirty six personally appears James Ervin and Mary Ann his — the party grantor within named before us the subscribers two Justices of the peace and acknowledges the within deed or instrument of writing to be their act and deed and the lands and premises therein mentioned and thereby bargained and sold to be the right and estate of the within named Michael Chriss party grantee therein named his heirs and assigns for ever according to the purport true intent and meaning of the said deed or instrument of writing and the acts of Assembly in such case made and provided and now at the same time also personally appears Mary Ann Ervin wife of the said James Ervin before us the subscribers two Justices of the peace and acknowledged the said deed or instrument of writing to be her act and deed and the lands and premises therein mentioned to be her right estate of the within named Michael Chriss his heirs and assigns for ever and the said Mary Ann Ervin being by us privately examined apart from and out of the hearing of her husband whether she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure acknowledges that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure taken and certified the day and year first before written.

Acknowledged before

PETER M'CLERY.
JACOB CLAMMER.

1249 *B.* On the third line of the first page the words and Mary Ann his wife was interlined before signed on the 30″ line of the 1″ page the words and Mary Ann his wife was interlined before signed on the 4″ line 2″ page the word or was interlined before signed on the 13″ line 2″ page the words and Mary Ann his wife was

interlined before signed on the 21" line 2" page the words and Mary Ann his wife was interlined before signed.

PETER M'CLEY.
JACOB CLAMMER.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. S folio 436 one of the Land Records of the said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of the said Allegany County this 2" day of August 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. James Ervin *et ux.* To Michael Chriss. Exhibit Brown No. 45. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1250 EXHIBIT BROWN No. 46.

At the request of Henry Thomas this deed was recorded August 20" 1839.

This Indenture made this Sixth day of May in the year of our Lord one thousand eight hundred and thirty between Michael Chriss and Morah his wife of Allegany County and State of Maryland of the one part & Henry Thomas of the same County and State of the other part.

Witnesseth that the said Michael Chriss and Morah his wife for and in consideration of sum of Six Hundred Dollars to them in hand paid by the said Henry Thomas before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have hereby granted bargained, sold, aliened, enfeoffed, and confirmed and by these presents do grant bargain sell alien enfeoff and confirm unto the said Henry Thomas his heirs and assigns two tracts or parcels of land called "Elder Spring" No. 1 beginning for the same at the end of eighty three perches of the eighth line of a part of a tract of land called "Elder Spring" deeded by William W. Hoye on the nineteenth day of December eighteen hundred and thirty one to David Kelley & deeded by the said D. Kelley to Michael Chriss on the fifteenth day of April 1836 and running thence north forty eight degrees, West eighty three perches, North thirty two degrees, West forty perches, North twenty three degrees East eighty perches, North Sixty Seven degrees, East Sixty perches East forty three perches to the beginning of the first line of the said tract of land deeded as aforesaid by the said William W. Hoye thence South Six degrees West as many perches as will arrive at a point from which by drawing a straight line to the beginning shall make the

OR COPY

said tract or No. 1 *contain* one hundred acres of Land then by a straight line to the beginning containing one hundred acres.

1251 No. 2 called Elder Spring transferred by deed of conveyance from James Ervin to Michael Chriss deed dated 2" day of April 1836 and bounded as followeth to wit beginning at the end of the second line of the original tract and running thence with the original line North Seventy degrees East one hundred and seventy three perches, West fifty Seven perches thence South Six degrees West one hundred and Sixty two perches then by a straight line to the beginning containing fifty acres of land making in both tracts joined together one hundred and fifty acres of land together with all and singular the buildings improvements woods, ways, water, water courses, rights libertys privileges hereditaments and appurtenances whatsoever belonging to the said one hundred & fifty acres of land or any wise appertaining and reversions and remainders rents issues and profits thereof and all the Estate, right, title, and interest whatsoever of them the said Michael Chriss Morah his wife and their heirs the said tracts or parcels of land and premises hereby granted bargained and sold and every part or parcel thereof with the appurtenances thereunto belonging to him the said Henry Thomas his heirs and assigns against them the said Michael Chriss and Morah his wife and their heirs and against all and every person or persons whatsoever claiming or to claim any right title or interest in and to the same or any part thereof shall and will hereafter warrant an- forever defend by these presents.

In witness whereof the said Michael Chriss and Morah his wife have hereunto subscribed their names and affixed their seals the day and year first above written.

MICHAEL CHRISS. [SEAL.]
MARIA CHRISS. [SEAL.]

Signed sealed and delivered in presence of
PETER M'CLEY.
JOHN FRANTZ.

1252 MARYLAND,
Allegany County, To wit:

On this sixth day of May 1839 personally appears Michael Chriss and his wife Morah of Allegany County being the part grantors above named before us two Justices of the peace and acknowledges the within deed or instrument of writing to be their acts and deeds and the lands and premises therein mentioned and thereby bargained and sold to be the right and estate of the within named Henry Thomas party grantee also therein named his heirs and assigns forever according to the purport true intent and meaning of the said deed and the acts of assembly in such case made and provided and the said Morah wife of the said Michael Chriss being by us privately examined apart from and out of the hearing of her husband whether she doth make her acknowledgment of the same willingly and freely and without being indust thereto by fear or threats of or ill usage by her husband or fear of his displeasure

acknowledges that she doth make her acknowledgment of the same willingly and freely and without being indust thereto by fear or threats of or ill usage by her husband or fear of his displeasure taken and certified the day and year above written before

PETER MCLEY.
JOHN FRANTZ.

P. S.—We certify that we are personally known to Michael Chriss and Morah Chriss the party grantor mentioned in the within deed to be the party claiming the land therein men.

PETER MCLEY.
JOHN FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a
1253 true copy of deed recorded in Liber W folio 657 one of the Land Records of the said Allegany County

In testimony whereof I hereto subscribe my name and affix the seal of the said Allegany County this 1" day of August 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Michael Chriss To Henry Thomas Exhibit Brown No. 46. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1254 EXHIBIT BROWN No. 47.

[One dol. State of Md. stamp.]

At the request of Thomas Lewis the following deed was recorded October 12" 1846.

This Indenture made this fifth day of October in the year of our Lord one thousand eight hundred and forty six, between Henry Thomas and Margaret his wife of Allegany County in the State of Maryland of the one part and Thomas Lewis of the same place of the other part

Witnesseth that the said Henry Thomas and Margaret his wife for and in consideration of the sum of Eight hundred Dollars current money to them in hand paid by the said Thomas Lewis at or before the sealing and delivery of these presents the receipt whereof they do hereby acknowledge have granted bargained and sold and by these presents do grant bargain and sell alein enfeoff release convey and confirm unto the said Thomas Lewis his heirs and assigns all that part of a tract of land called "Elder Spring" lying and being in the County aforesaid which Michael Chriss and Margaret his wife sold and conveyed to the said Henry Thomas by

deed bearing date on the nineteenth day of December in the year eighteen hundred and thirty one and recorded in Liber A. B. No. — folios — one of the Land Records of the County aforesaid and which said part of said tract of land contains the quantity of one hundred and fifty acres reference being hereby made to the said deed and the aforesaid record thereof for greater certainty.

Together with all and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining.

1255 To have and to hold the said part of said tract of land called "Elder Spring" unto him the said Thomas Lewis his heirs and assigns together with all and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining and all the right title estate claim and interest of them the said Henry Thomas and Margaret his wife in and to the same to the only proper use and benefit of him the said Thomas Lewis his heirs and assigns forever.

And the said Henry Thomas and Margaret his wife for themselves and their heirs do hereby covenant promise grant and agree to and with the said Thomas Lewis his heirs and assigns that they the said Henry Thomas and —— his wife and their heirs the said piece or parcel of land unto him the said Thomas Lewis his heirs and assigns against them the said Henry Thomas and Margaret his wife and their heirs and against all manner of persons whomsoever shall and will warrant and forever defend by these presents. In testimony whereof the said Henry Thomas and Margaret his wife have hereunto subscribed their names and affixed their seals the day and year first above written.

his
HENRY x THOMAS. [SEAL.]
mark

her
MARGARET x THOMAS. [SEAL.]
mark

Signed sealed and delivered in presence of
RICH. B. JAMISON.
JACOB CLAMMER.

MARYLAND, *Allegany County, To wit:*

Be it remembered that on this fifth day of October in the
1256 year of our Lord one thousand eight hundred and forty six before us the subscribers two Justices of the Peace of the State of Maryland in and for Allegany County personally appeared Henry Thomas and Margaret his wife who are personally known to us to be the persons named and described as and professing to be the party grantors in and to the aforegoing deed or instrument of writing and acknowledged the same to be their respective act and deed.

And the said Margaret wife of the said Henry Thomas did sign and seal the said deed or instrument of writing before us Justices as aforesaid out of the presence and hearing of her said husband and

she the said Margaret being examined by us out of the presence and hearing of her said husband whether she doth execute and acknowledge the same freely and voluntarily and without being induced to do so by fear or threats of or ill usage by her said husband or by fear of his displeasure she acknowledges and says she doth.

Acknowledged before us

RICH. B. JAMISON, *J. P.*
JACOB CLAMMER, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court, in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. 2 folio 295 one of the Land Records of said Allegany County.

In testimony whereof I hereunto subscribe my name and affix the seal of said Allegany County this 30″ day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

1257 Endorsed: Certified Copy of Deed. Henry Thomas *et ux.* To Thomas Lewis. Exhibit Brown No. 47. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1258 EXHIBIT BROWN No. 48.

[State of Maryland, 1 Dollar.]

At the request of Lewis Pritchard the following deed of trust was recorded March 29″ 1847:

This Indenture made this twenty ninth day of March in the year eighteen hundred and forty seven between Thomas Lewis and Eliza his wife of Allegany County in the State of Maryland of the one part and Lewis Pritchard of the same place of the other part.

Witnesseth that the said Thomas Lewis and Eliza his wife for and in consideration of the sum of Two hundred and sixty six dollars and sixty six cents and two thirds of a cent current money to them in hand paid by the said Lewis Pritchard at & before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained and sold — by these presents do grant bargain and sell alein enfeoff release convey and confirm unto the said Lewis Pritchard his successors and assigns for the uses and purposes hereinafter mention- all that lot piece or parcel of land the same being part of a tract of land called "Elder Spring" lying and being in the county aforesaid and which piece of land hereby bargained & sold is bounded and described as follows: Beginning for the same at the end of the second line of the whole tract called "Elder Spring" & running thence with the lines thereof North seven degrees East one hundred and seventy three perches West fifty seven perches then

South six degrees West one Hundred and sixty two perches then by a straight line to the beginning containing Fif-y acres more or less it being the same piece of land which William W. Hoye sold and conveyed to James Ervin by deed bearing date on the ninth day of June in the year eighteen hundred and thirty two and re-
1259 corde- in Liber A. B. No. 2 folios 98 and 99 one of the Land Records of the county aforesaid and which said piece of land the said James Ervin afterwards sold and conveyed to Michael Chriss by deed duly executed and recorded and the said Chriss afterwards sold and conveyed the same to Henry Thomas who has since sold and conveyed the same to the said Thomas Lewis together with all and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the said piece or parcel of land with all and singular the rights privileges hereditaments and appurtenances thereunto belonging unto him the said Lewis Pritchard his successors and assigns in trust nevertheless for the use and benefit of Mary Hitchens of the county aforesaid for and during her natural life and from and after her death for the use and benefit of the*re* three children to wit: Mary Hitchens Samuel Hitchens and Elizabeth Hitchens to the only proper use and benefit of the said Mary Hitchens for and during her natural life and from and after her death to and for the use and benefit of the said Mary Hitchens Samuel Hitchens, and Elizabeth Hitchens their heirs and assigns forever.

In testimony whereof the said Thomas Lewis and Eliza, his wife have hereunto subscribed their names and affixed their seals on the day and year first above written.

THOMAS LEWIS. [SEAL.]
ELIZA LEWIS. [SEAL.]

Signed sealed and delivered in presence of

PETER BARE.
GEORGE LOGSDEN.

MARYLAND, ALLEGANY *County, To wit:*

Be it remembered that on this twenty ninth day of March
1260 in the year eighteen hundred and forty seven before us the subscribers two Justices of the Peace of the State of Maryland in and for the county aforesaid personally appeared Thomas Lewis — Eli*y*a his wife who are personally known to us to be the persons named and described as and professing to be the party grantors in & to the aforegoing deed or instrument of writing and severally acknowledged the same to be their respective act and deed and the said Eliza, wife of the said Thomas Lewis did sign and seal the said deed before us Justices as aforesaid out of the presence and hearing of her said husband & she the said Eliza being by us examined out of the presence and hearing of her husband whether she doth execute and acknowledge the said deed voluntarily and freely & without being induced to do so by fear or threats of or ill usage by her said

husband or by fear of his displeasure she acknowledges and saith that she doth.

Acknowledge- before, *as.*

PETER BARE, *J. P.*
GEORGE LOGSDEN, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of deed recorded in Liber 3 folio 287 one of Land records of said Allegany County.

In testimony whereof I, hereto subscribe my name and affix the seal of said Allegany County this 29″ of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Thomas Lewis *et ux.* To Lewis Pritchard. Exhibit Brown No. 48. Supreme Court
1261 U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1262 EXHIBIT BROWN NO. 49.

[U. S. 50¢ Stamp.]

At the request of Cornelius W. Friend this Deed was recorded January 5″ 1865.

This indenture made this fifteenth day of October eighteen hundred and sixty four. Between Mary Van Sickel wife of John Van Sickel Mary Kelley wife of A. J. Kelley and Elizabeth Hitchens of Preston County State of West Virginia and Samuel Hitchens and Kate his wife of Ohio County State aforesaid of the one part and Cornelius W. Friend of Preston County West Virginia of the other part.

Witnesseth that the said Mary Van Sickel, Mary Kelley, Elizabeth Hitchens, Samuel Hitchens and Kate his wife for and in consideration of the sum of four hundred and sixty five dollars current money to them in hand paid by the said Cornelius W. Friend at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledge-.

Have granted bargained and sold and by these presents do grant bargain and sell, alien, enfeoff, release, convey and confirm unto the said Cornelius W. Friend his heirs and assigns all that lot or parcel of land the same being part of a tract of land called "Elder Spring" lying and being in Allegany County State of Maryland and which piece of land hereby bargained and sold is bounded and described as follows:

Beginning for the same at the end of the record line of the whole tract called "Elder Spring" and running thence with the lines thereof

North seven degrees, East one hundred and seventy three perches West fifty seven perches thence North six degrees, West one hundred and sixty two perches then by a straight line to the beginning
1263 containing fifty acres more or less.

It being the same piece of land which William W. Haye sold and conveyed to James Ervin by deed bearing date on the ninth day of June in the year eighteen hundred and thirty two and recorded in Liber A. B. No. 2 folio- 98 and 99 one of the Land Records aforesaid and which said piece of land the said James Ervin afterwards sold and conveyed to Michael Chriss by deed duly executed and recorded and the said Chriss afterwards sold and conveyed the same to Henry Thomas who has since sold and conveyed the same to Thomas Lewis who has since sold the same to Lewis *B*ritchard by deed of trust recorded in Liber H. B. No. 3 folios 287, 288 one of the Land Records of Allegany County together with all, and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To Have and To Hold the said piece or parcels of Land with all and singular the rights privileges hereditaments and appurtenances thereunto belonging unto him the said Cornelius W. Friend his heirs and assigns forever and also that they the said Mary Van Sickel, Mary Kelley Elizabeth Hitchens, Samuel Hitchens, and Kate his — their heirs and assigns the tract and parcels of Land and premises above described and herein mentioned to be granted bargained and sold with the appurtenances unto the said Cornelius W. Friend his heirs and assigns shall and will warrant and forever defend by these presents against the claim or claims of all persons whomsoever.

In testimony whereof the said Mary Van Sickel, Mary Kelley, Elizabeth Hitchens, Samuel Hitchens and Kate his wife have hereunto set our hands and seals on the day and year first written.
1264

her
MARY VAN x SICKEL. [SEAL.]
mark
MARY KELLEY. [SEAL.]
SAMUEL HITCHENS. [SEAL.]
KATE HITCHENS. [SEAL.]

Signed, sealed and delivered in presence of
JOHN VAN SICKEL.
CHRISTIAN FIKE OF IAC.

STATE OF MARYLAND,
Allegany County, To wit:

I hereby certify that on this fifteenth day of October in the year of our Lord 1864 personally appeared Mary Van Sickel, Mary Kelley Elizabeth Hitchens, Samuel Hitchens, and Kate his wife before me the subscriber a Justice of the Peace of the State of Maryland in and for Allegany — and did each acknowledge the foregoing deed to be their and each of their act.

Witness my hand and seal.

JOSEPH RECKNOR, *J. P.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the above and aforegoing is a true copy of Deed recorded in Liber No. 22 folio 307 one of the Land Records of Allegany County.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Allegany County this 25″ day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Mary Van Sickel *et al.* To Cornelius W. Friend. Exhibit Brown No. 49. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1265 EXHIBIT BROWN No. 50.

At the request of Marshal Friend this deed was recorded Feb'y 14″ 1884 at 12½ o'clock P. M.

This Deed, Made this 9″ day of February 1884, between Sarah Friend Sen. of Preston County & State of West Virginia, Ira E. Friend & Clara B. Friend his wife, John H. Friend & Sevilla Friend, his wife, Wm. H. H. Friend and Jane F. Friend, his wife, and Martha J. Forkner, of Garrett County and State of Maryland of the one part and Marshal Friend of Preston Co. & State of West Va. of the other part.

Witnesseth, that the said parties of the first part for and in consideration of the sum of Two hundred and fifty dollars to them in hand paid by the said Marshall Friend, (party of the second part) at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain and sell, alien enfeoff, release, convey and confirm unto the said Marshal Friend, his heirs and assigns, All our right, title, claim, dower and interest in all that lot, piece or parcel of land, the same being a part of a tract of land called "Elder Spring," lying and being in Garrett County and State of Maryland bounded and described as follows: Beginning for the same at the end of the second line of the whole tract called "Elder Spring," and running thence with the lines thereof N. 7° East one hundred and seventy three perches, West fifty seven perches, thence South 6° West one hundred and sixty two perches, then by a straight line to the beginning, containing fifty acres, more or less, and more fully described by deed from Mary Vansickle & others to C. W. Friend, dated October 15″ 1864, and recorded Jan. 3″ 1865 in Liber H. R. No. 22 folio 307 one of the Land Records of Alle-

gany County, Md. Together with all the rights, hereditaments, appurtenances and privileges thereto belonging.
1266

Witness our hands and seals,

her
SARAH x FRIEND, SEN. [SEAL.]
mark.
IRA E. FRIEND. [SEAL.]
CLARA B. FRIEND. [SEAL.]
JOHN H. FRIEND. [SEAL.]
her
CIVILLA M. x FRIEND. [SEAL.
mark.
W. H. H. FRIEND. [SEAL.]
JANE F. FRIEND. [SEAL.]
MARTHA J. FORKNER. [SEAL.]

Test:
MELVEY G. FRIEND.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify, that on this 9" day of February in the year eighteen hundred and eighty four before me the subscriber, a Justice of the Peace of said State in and for the County aforesaid, personally appeared Sarah Friend Sen. Ira E. Friend & Clara B. Friend his wife, John H. Friend and Sevilla Friend, his wife, Wm. H. H. Friend and Jane F. Friend, his wife, and Martha J. Falkner and did each acknowledge the aforegoing deed to be their respective act.

LEVI C. FIKE, *J. P.*

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, do hereby certify, that the above and aforegoing is a true copy, taken from Liber W. H. T. No. 8 folios 374 &c. one of the Land Records of Garrett County Maryland.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court for Garrett County, at Oak-
1267 land, this 23rd day of July, A. D. 1904.

E. Z. TOWER, *Clerk.*

Endorsed: Certified Copy, Deed From Sarah Friend Sen. & others To Marshal Friend. Exhibit Brown No. 50. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia Filed Oct. 15, 1907.

1268 EXHIBIT BROWN No. 51.

At the request of David Kelley this deed was recorded the 16" April 1832.

This Indenture made this nineteenth day of December in the year of our Lord one thousand eight hundred and thirty one between William W. Hoye of Allegany County State of Maryland of the one part and David Kelley of the County and State aforesaid of the other part.

Witnesseth that the said William W. Hoye for and in consideration of the sum of three hundred dollars current money of the United States to him in hand paid by the said David Kelley before the sealing and delivery of these presents the receipt whereof he the said William W. Hoye doth hereby acknowledge hath granted bargained sold alened enfeoffed and confirmed and by these presents doth grant bargain sell alein and enfeoff confirm unto the said David Kelley his heirs and assigns that part of a tract or parcel of land called "Elder Spring" hereafter described beginning for the same at the end of fifty seven perches on the fourth line of the original tract and running thence South Six degrees, West five hundred and fourteen perches to the end of forty four perches on the fourteenth line of said tract and with the line of said tract reversed North fifty one degrees, West forty four perches, North Ten degrees, East one hundred and forty seven perches, North forty two degrees West forty perches, North eight degrees East thirty perches, North thirty eight degrees, East eighty two perches, North twenty perches, North forty eight degrees, West ninety eight perches, North thirty two degrees, West forty perches, North Seventy three degrees, East Eighty perches North sixty seven degrees, East sixty perches, East forty three perches to the beginning containing Two Hundred acres together with

1269 all and singular the buildings improvements, woods ways water courses rights libertys privileges hereditaments and appurtenances whatsoever thereto belonging or in any wise appertaining and the reversions rents issues and profits and all the estate right title and interest whatsoever of him the said William W. Hoye both at law and in equity of into and out of the said tract or parcel of land and premises hereby bargained and sold or meant mentioned or intended hereby so to be and every or any part and parcel thereof.

To Have and to Hold the said tract or parcel of land so as aforesaid described called "Elder Spring" together with the buildings appurtenances and all and singular other the premises hereby bargained and sold or meant mentioned or intended hereby so to be and every part and parcel thereof with their and every of their appurtenances unto the said David Kelley his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said William W. Hoye for himself his heirs executors & administrators doth hereby covenant, grant, promise, and agree to and with the said David Kelley his heirs executors administrators or assigns that he the said William W. Hoye and his heirs the said tract or parcel

of land and premises hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said David Kelley his heirs and assigns against him the said William W. Hoye and His heirs and against all and every person or persons whatsoever claiming or to claim any right title or interest in and to the same or any part thereof Shall and will hereafter warrant and forever defend by these presents.

In witness whereof the said William W. Hoye hath hereunto subscribed his name and affixed his seal the day & year first above written.

W. W. HOYE. [SEAL.]

1270 Signed, sealed and delivered in presence of us,
PETER McCLARY.
JACOB CLAMMER.

STATE OF MARYLAND,
Allegany County, To wit:

On this nineteenth day of December in the year of our Lord 1831 William W. Hoye of Allegany County being the grantors named in the above Instrument of writing personally appears before us Two Justices of the Peace for said County and acknowledged the above instrument of writing to be his act and deed and the land and premises therein mentioned and thereby bargained and sold to be the right and estate of the within named David Kelley party grantee also therein named his heirs and assigns forever according to the purport true intent and meaning of the said instrument of writing and the acts of assembly in such case made and provided and at the same time also personally appeared Mary Hoye wife of said William W. Hoye before us as aforesaid and acknowledges the said deed or instrument of writing to be her act and deed and the land and premises therein mentioned to be the right and estate of the within named David Kelley his heirs and assigns forever and the said Mary Hoye being by us privately examined apart and out of the hearing of her husband acknowledges that she doth make her acknowledgment of the same freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure? Taken and certified the day and year above written.

PETER McCLARY.
JACOB CLAMMER.

1271 Both the fourteenth line on the first page the words or parcel were interlined before signed on the 18″ line the word ninth was interlined before signed.

Received of David Kelley the full amount of $300. dollars the compensation for the above mentioned land.

Witness my hand this 19″ of December 1831.

W. W. HOYE.

Test:
DAVID RUTAN.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County hereby certify that the foregoing is a true copy of deed recorded in Liber No. P. folio 535 one of the Land Records of said Allegany County.

In Testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 4" day of August 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. W. W. Hoye To David Kelley. Exhibit Brown No. 51. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1272 EXHIBIT BROWN No. 52.

At the request of Michael Chriss this deed was recorded the 7" day of September 1836.

This Indenture made this fifteenth day of April in the year of our Lord eighteen hundred and thirty six between David Kelley and Rossanah his wife of Allegany County and State of Maryland of the one part and Michael Chriss of Preston County and State of Virginia of the other part.

Witnesseth that the said David Kelley and Rossanah his wife for and in consideration of the sum of three hundred and fifty dollars to them in hand paid by the said Michael Chriss before the sealing and delivery of these presents the receipt whereof they the said David Kelley & Rossanah his wife hereby acknowledge have granted bargained sold al*e*in*e* enfeoffed and confirmed and by these presents do grant bargain sell al*e*in enfeoff and confirm unto the said Michael Chriss his heirs and assigns all that part of a tract or parcel of land called "Elder Spring" hereafter described beginning for the same at the end of eighty three perches of the eighth of a part of a tract of land called "Elder Spring deeded by William W. Hoye on the nineteenth day of December eighteen hundred and thirty one to the above named David Kelley and running thence north forty eight degrees West eighty three perches, North thirty two degrees, West forty perches, North twenty three degrees, East eighty perches, North sixty seven degrees, East sixty perches, East forty three perches, to the beginning of the first line of the said tract of land deeded as aforesaid by the said William W. Hoye thence South six degrees West as many perches as will arrive at a point from which by drawing a straight line to the beginning shall make the said tract contain one hundred acres of land then by a straight line to the be-

1273 ginning containing one hundred acres together with all and singular the buildings improvements woods ways water watcr courses rights title liberty*s* privileges hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining and the reversions and remainders rents issues and profits thereof

and all the estate right title and interest whatsoever of them the said David Kelley and Rosannah his wife both at law and in equity of in and to and out of the said tract or parcel of land and premises hereby bargained and sold or meant or mentioned or intended so to be and every and any part and parcel thereof.

To have and to hold the said tract or parcel of land so as aforesaid described called "Elder Spring" together with the buildings and appurtenances and all and singular other the premises hereby bargained and sold or meant or mentioned or intended hereby so to be and every part and parcel thereof with their and every of their appurtenances unto the said Michael Chriss his heirs and assigns forever and to and for no other use intent or purpose whatsoever and the said David Kelley and Rossanah his wife for themselves their heirs executors and administrators do hereby covenant grant promise and agree to and with the said Michael Chriss his heirs executors administrators or assigns that they the said David Kelley and Rossanah his wife and their heirs the said tract or parcel of land and premises hereby granted bargained and sold and every part and parcel thereof with the appurtenances thereunto belonging to him the said Michael Chriss his heirs and assigns against them the said David Kelley and Rossanah his wife and their heirs and against all and every person or persons whatsoever claiming or to claim any right title or interest in and to the same or any part thereof shall and will hereafter warrant and for ever defend by these presents.

1274 In witness whereof the said David Kelley and Rossanah his wife have hereunto subscribed their names and affixed their seals the day and year first above written.

DAVID KELLEY. [SEAL.]
ROSSANAH KELLEY. [SEAL.]

Signed sealed and delivered in presence of
JACOB CLEMMER.
JOSEPH FRANTZ.

Received on the day of the date of the within Indenture of and from the above named Michael Chriss the sum of three hundred and fifty dollars being the consideration mentioned in the said deed.

DAVID KELLEY.

JACOB CLAMMER.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

On this fifteenth day of April personally appears David Kelley and Rossanah his wife of said County being the party grantors above named before us the subscribers two Justices of the Peace and acknowledge the within Deed or Instrument of writing to be their act and deed and the premises their mentioned and thereby bargained and sold to be the right and estate of the within named Michael Chris party grantee also therein named his heirs and assigns forever

according to the purport true intent and meaning of the said deed or instrument of writing and the acts of assembly in such case made and provided and now at the same time also personally appears Rossanah wife of the said David Kelley before us two Justices of the peace as aforesaid acknowledges the said deed or instrument of writing to be her act and deed and premises therein mentioned to be the right and estate of the within named Michael Chriss his heirs and assigns for ever and the said Rossanah being by us privately examined apart and out of the hearing of her husband whether
1275 she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fears or threats of or ill usage by her said husband or fear of his displeasure acknowledges that she doth make her acknowledgment of the same willingly and freely and without being indu*st* thereto by fear or threats of or ill usage by her husband or fear of his displeasure taken and certified the day and year above written.

JACOB CLAMMER.
JOSEPH FRANTZ.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young Clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of deed recorded in Liber No. S folio 437 one of the Land Records of the said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of the said Allegany County this 2″ day of August 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. David Kelley *et ux.* To Michael Chriss. Exhibit Brown No. 52. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1276 EXHIBIT BROWN No. 52*a*.

At the request of Lewis Pritchard the following deed was recorded October 12″ 1846:

This Indenture made this fifth of October in the year of our Lord one thousand eight hundred and forty six between David Kelley and Rossanah his wife of Allegany County in the State of Maryland of the one part and Lewis Pritchard of the same place of the other part.

Witnesseth that the said David Kelley and Rossanah his wife for and in consideration of the sum of Four Hundred and sixty two Dollars and fifty cents current money to them in hand paid by the said Lewis Pritchard at and before the sealing and delivery of these presents the receipt whereof they do hereby acknowledge have granted bargained and sold aliened enfeoffed released and confirmed and by these presents do grant bargain and sell alien enfeoff release

convey and confirm unto the said Lewis Pritchard his heirs and assigns all that part of a tract of land called "Elder Spring" lying and being in Allegany County aforesaid which was conveyed to the said David Kelley by William W. Hoye by deed dated on the nineteenth day of December in the year eighteen hundred and thirty one and recorded in Liber A. B. No. T. folios 535, 536 and 537 one of the Land Records of the county aforesaid excepting never the less out of the quantity in said deed mentioned the quantity of one hundred acres with the said David Kelley and Rossanah *his*—conveyed to a certain Michael Chriss by deed bearing date on the fifteenth day of April in the year eighteen hundred and thirty six and recorded in Liber A. B. No. S. folio 437 one of the land Records of the county aforesaid as by reference to the aforesaid records will more fully appear it being the meaning of these presents and of the parties hereto that the said David Kelley and Rossanah his wife hereby sell and con-
1277 vey to the said Lewis Pritchard the quantity of one hundred acres of land being all that part of said tract called "Elder Spring" which was conveyed as aforesaid by the said William W. Hoye to the said David Kelley and reference is hereby made to the said deed and the records thereof aforesaid for greater certainty except that part thereof which the said David Kelley and Rossanah his wife conveyed as herein before mentioned to the aforenamed *named* Michael Chriss by the deed aforesaid together with all and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the said part of said tract of land called Elder Spring unto him the said Lewis Pritchard his heirs and assigns together with all and singular the rights privileges hereditaments and appurtenances thereto belonging or in any wise appertaining and all the right title estate and interest of them the said David Kelley and Rossana his wife in and to the same to the only proper use and benefit of him the said Lewis Pritchard his heirs and assigns forever and the said David Kelley and Rossanah his wife for themselves and their heirs do hereby covenant promise grant and agree to and with the said Lewis Pritchard his heirs and assigns that the said David Kelley and Rossanah his wife and their heirs the said tract of land herein before described and hereby bargained and sold unto him the said Lewis Pritchard his heirs and assigns against them the said David Kelley and his wife and their heirs and against all manner of persons whomsoever shall and will warrant and forever defend by these presents In testimony whereas the said David Kelley and Rossanah his wife have hereunto subscribe their — and affixed their seals on the day and year first above written:

1278 DAVID KELLEY. [SEAL.]
ROSSANAH KELLEY. [SEAL.]

Signed sealed and delivered in presence
RICHARD B. JAMISON.
JACOB CLAMMER.

MARYLAND, *Allegany County, To wit:*

Be it remembered that on this fifth day of October in the year of our Lord one thousand eight hundred and forty six before us the subscribers two Justices of the Peace of the State of Maryland in and for the county aforesaid personally appeared David Kelley and Rossanah his wife who are personally known to us to be the persons named and described as and professing to be the party grantors in and to the aforegoing deed or instrument of writing and severally acknowledged the same to be their respective act and deed and the said Rossanah the wife of the said David Kelley did sign and seal the said deed or instrument of writing before us Justices as aforesaid out of the presence and hearing of her said — and she the said Rossanah being by us examined out of the presence and hearing of her said husband whether she doth execute and acknowledge the same voluntarily and freely and without being induced to do so by fear or threats of or ill usage by her said husband or by fear of his displeasure she acknowledges and saith that she doth.

Acknowledged before us.

RICHARD B. JAMISON, *J. P.*
JACOB CLAMMIN, *J. P.*

STATE OF MARYLAND,
County of Allegany, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a
1279 true copy of Deed recorded in Liber No. 3 folio 44 one of the Land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 28 day of July 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. David Kelley *et ux.* To Lewis Pritchard. Exhibit Brown No. 52A. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1280 EXHIBIT BROWN No. 52*b*.

At the request of William Philips, George Spill and Thomas Spill this deed was recorded Feb'y 17 1854.

This Indenture made this seventeenth day of November in the year of our Lord one thousand eight hundred and fifty three between Lewis Pritchard and Hannah Pritchard his wife of Allegany County in the State of Maryland of the first part and William Philips, George Spill, and Thomas Spill of the County and State aforesaid of the second part.

Witnesseth that the said Lewis Pritchard and Hannah his wife for and in consideration of the sum of one thousand dollars current

money to them in hand paid by the said parties of the second part at and before the sealing and delivery of these presents the receipt whereof they do hereby acknowledge have granted, bargained, and sold ale*i*ned enfeoffed released and confirmed and by these presents do grant bargain and sell ale*i*n enfeoff*ed* release convey and confirm unto the said parties of the second part their heirs and assigns all that part of a tract of land called "Elder Spring" lying and being in Allegany County aforesaid which was conveyed to the said Lewis Pritchard by David Kelley and Rosanna his wife by deed bearing date on the fifth day of October in the year eighteen hundred and forty six and recorded in Liber H. B. No. 3 folios 44, 45, 46, one of the Land Records of Allegany County aforesaid excepting nevertheless out of the quantity in said deed mentioned the quantity of one hundred acres which the said David Kelley and Rosanna his wife conveyed to a certain Michael Chress by deed bearing date on fifteenth day of April in the year eighteen hundred and thirty six and recorded in Liber A. B. No. 8 folios 437 one of the Land Records of the County aforesaid as by reference to the aforesaid
1281 records will more fully appear it being the meaning of these presents and of the parties hereto that the said Lewis Pritchard and Hannah his wife hereby sell and convey to the said parties of the second part the quantity of one hundred acres of land being all that part of said tract called "Elder Spring" which was conveyed as aforesaid by the said Daniel Kelley and Rosanna his wife to the said Lewis Pritchard and reference is hereby made to the said deed and the record thereof aforesaid for greater certainty ex*pect* that part thereof which the said Daniel Kelley and Rosannah his wife conveyed as hereinbefore mentioned to the aforenamed Michael Chriss by the deed aforesaid.

Together with all and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining To have and to hold the said part of said tract of land called "Elder Spring" unto them the said parties of the second part their heirs and assigns together with all and singular the rights privileges hereditaments and appurtenances thereunto belonging or in any wise appertaining and all the right title estate and interest of them the said Lewis Pritchard and Hannah his wife in and to the same to the only proper use and benefit of them the said parties of the second part their heirs and assigns forever and the said Lewis Pritchard and Hannah his wife for themselves and their heirs do hereby covenant promise and agree to and with the said parties of the second part, their heirs and assigns, that they, the said Lewis Pritchard, and Hannah, his wife, their heirs the said part of said tract of land hereinbefore described and hereby bargained and sold unto them the said parties of the second part their heirs and
1282 assigns against them the said Lewis Pritchard and Hannah his wife and their heirs and against all manner of persons whomsoever shall and will warrant and forever by these presents.

In testimony whereof the said Lewis Pritchard and Hannah his

wife have hereinto subscribed their names and affixed their seals on the day and year first above written.

LEWIS PRITCHARD. [SEAL.
HANNAH PRITCHARD [SEAL.]

Signed sealed and delivered in presence of
JOHN C. WEIS.
THO. McCORMICK.

STATE OF MARYLAND,
Allegany County, To wit:

Be it remembered and it is hereby certified that on this seventeenth day of November in the year of our Lord one thousand eight hundred and fifty three before the subscriber two Justices of the Peace of the State of Maryland in and for the County of Allegany aforesaid personally appeared Lewis Pritchard and Hannah Pritchard his wife they being known to us to be the persons who are named and described as and professing to be the parties to the foregoing deed or indenture and do severally acknowledge the said indenture or instrument of writing to be their respective act and deed the said Hannah Pritchard having signed and sealed said indenture before us out of the presence and hearing of her husband and the said Hannah Pritchard being by us examined out of presence and hearing of her said husband whether she doth execute and acknowledge the same freely and voluntarily and without being induced to do so by fear or threats of or ill usage by her husband or by fear of his displeasure declareth and saith that she doth. In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

JOHN C. WEIS, *J. P.*
THO. Mc. CORMICK, *J. P.*

1283 Received one dollar State of Maryland Stamp tax at the time this deed was offered for record.

H. RESLEY, *Clk.*

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young clerk of the Circuit Court in and for Allegany County State aforesaid hereby certify that the foregoing is a true copy of Deed recorded in Liber No. 11 folio 144 one of the land Records of said Allegany County.

In testimony whereof I hereto subscribe my name and affix the seal of said Allegany County this 28″ 1904.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: Certified Copy of Deed. Lewis Pritchard *et ux* To William Phillips *et al.* Exhibit Brown No. 52 B. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

50—1

1284 EXHIBIT BROWN No. 52c.

At the request of W. R. Spill this mortgage was recorded Oct. 26th 1875.

This Mortgage, made this twelfth day of October, in the year eighteen hundred and seventy five, by William Phillips and Ann Phillips, his wife, of Mchaska County, in the State of Iowa, to George Spill of the County and State aforesaid, and Thomas Spill of Allegany County, in the State of Maryland.

Whereas, the said William Phillips is indebted unto the said George Spill and Thomas Spill in the aggregate sum of Two thousand dollars on and by virtue of his two promissory notes, both bearing date on the eighth day of October, in the year eighteen hundred and seventy three, and payable to the said George Spill and Thomas Spill in five years, with interest from the date of the same; and whereas, also on the said eighth day of October, in the year eighteen hundred and seventy three, the said William Phillips and Ann Phillips, his wife did execute to the said George Spill and Thomas Spill a mortgage to secure the payment of said notes and which is recorded in Liber H. R., No. 39, folio 550, one of the Land Records of Allegany County; and whereas, the said Mortgagees failed or neglected to make affidavit to the consideration in said mortgage as required by law, thereby making said mortgage inoperative and of non effect.

Now therefore this mortgage witnesseth, that the said William Phillips and Ann Philips, his wife, being desirous to secure the payment of the aforesaid notes at their maturity according to their tenor and effect, do grant in fee simple unto the said George Spill and Thomas Spill one undivided third part of the following tract or parcel of land called "Elder Spring" lying and being in Garrett County (formerly a part of Allegany County), in the State
1285 of Maryland, and which is more particularly described in a deed from Lewis Pritchard and Hannah Pritchard, his wife, to the said William Phillips, George Spill and Thomas Spill, dated on the tenth day of November in the year eighteen hundred and fifty three and recorded in Liber H. R., No. 11, folio 144, one of the Land Records of said Allegany County.

Provided that if the said William Phillips shall pay to the said George Spill and Thomas Spill the aforesaid notes and each of them at the time they shall arrive at maturity, then this mortgage shall be void. But in case default shall be made in the payment of the said notes or either of them, with the interest thereon, according to the tenor and effect of the same, then it shall be lawful for the said George Spill and Thomas Spill, or either of them, to sell the said mortgaged premises at Oakland or Cumberland by public auction for cash after giving at least twenty days public notice of the time, place and terms of sale in some newspaper published in the City of Cumberland, and also in some newspaper published in said Garrett County, prior to the day of sale, and to apply the proceeds

of such sale to the payment in the first place of the expenses attending said sale, and then to the payment of the said debt, and the surplus, if any, to pay to the said William Phillips.

Witness our hands and seals.

WILLIAM PHILLIPS. [SEAL.]
her
ANN x PHILLIPS. [SEAL.]
mark

Test:
L. H. HOLE.
A. W. HAWKINS.

STATE OF IOWA,
Mehaska County, To wit:

I hereby certify that on this twelfth day of October, in the year eighteen hundred and seventy five, before me, the subscriber, a Notary Public of Mehaska County, State of Iowa, personally
1286 appeared William and Ann Phillips, his wife, and did each acknowledge the aforegoing mortgage to be their respective act; and at the same time, before me, also appeared Thomas Spill, one of the Mortgagees, and made oath in due form of law, that the consideration in the above mortgage is true and *bona fide* as therein set forth.

In testimony whereof, I have hereunto set my hand and notarial seal on the day and year aforesaid.

[SEAL OF NOTARY.] LEONARD H. HOLE,
Notary Public.

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and aforegoing is a true copy taken from Liber W. H. T., No. 2, folios 183 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court for Garrett County, at Oakland, this 14th day of July, A. D., 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Certified Copy of Mortgage from William Phillips & wife to George & Thomas Spill. Exhibit Brown No. 52 C. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1287 EXHIBIT BROWN No. 53.

William Deakins, Junior, His Patent, "Cherry Hill," 384 Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that Whereas Brooke Beall on the twenty fifth day of April, seventeen hundred and seventy four had surveyed for him a tract of land called "Cherry Hill," lying then in Frederick County, now in Washington, and containing three hundred and eighty four acres, by virtue of so much part of a warrant for four hundred and thirty four acres and one half acre, granted him out of the Proprietary's Land Office the thirtieth day of March seventeen hundred and seventy four, according to the Conditions of Plantation then in force as appears—That the said Brooke Beall by an assignment dated the twenty fourth day of August, seventeen hundred and seventy four made over unto William Deakins, Junior, and his heirs, all his right, title, property, claim and demand of in and to the Certificate of the aforesaid tract of land, and desired that Patent might issue in his name for the same, and the right of the Proprietary being now vested in the State of Maryland—

The said State doth hereby Grant unto him the said William Deakins Junior all that the aforesaid Tract or parcel of land called "Cherry Hill," lying in Washington County—

Beginning in the Centre between three bounded Trees, a locust, a White Oak and an Ash standing on a rising about one mile Westwardly of Buffelow Run and about five or six miles South Westwardly of Jacob Froman's Mill, and running thence South, eighty degrees East, one hundred perches; South, thirty degrees East, sixty perches; East, seventy three perches; North, sixty eight perches;

North, sixty eight degrees West, one hundred and seventy six
1288 perches; South, eighty degrees West, one hundred perches; South, fifty three degrees West, seventy two perches; South, four degrees West, twenty eight perches; South, forty six degrees West, fifty four perches; West, one hundred and twenty perches; South, twelve degrees West, eighty six perches; South, sixty seven degrees East, sixty perches; South, fifty perches; South, twenty nine degrees East, sixty four perches; North, seventy one degrees East, one hundred perches; North, sixteen degrees East, one hundred and thirty four perches, then with a straight line to the beginning—

Containing three hundred and eighty four acres, according to the Certificate of Survey thereof taken and returned into the Land Office bearing date the twenty fifth day of April, seventeen hundred and seventy four and there remaining, Together with all rights, profits, benefits and privileges thereunto belonging: To Have and To Hold the same unto him the said William Deakins Junior his heirs and assigns forever—

Given under the Great Seal of the State of Maryland, this fifteenth day of February, seventeen hundred and eighty six—

Witness the Honorable John Rogers Esquire Chancellor—

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the aforegoing is a true copy of the Patent for "Cherry Hill," 384 acres as recorded in Liber I. C. No. A. folio 629 one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and
1289 affixed the Seal of the Land Office of Maryland, this 29" day of June, eighteen hundred and ninety seven.

[SEAL.] WM. O. MITCHELL,
Commissioner of the Land Office.

Endorsed: Copy Patent "Cherry Hill," 384 acres. Exhibit Brown No. 53. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Cost $1.15.

1290 EXHIBIT BROWN NO. 54.

At the request of Roger Perry the following Deed was Recorded 12th March 1798.

This Indenture, Made this thirtieth day of January in the year of our Lord one thousand seven hundred and ninety eight, between William Deakins, Junr. of Montgomery County and State of Maryland of the one part, and Roger Perry of Allegany County and State aforesaid of the other part, Witnesseth:

That the said William Deakins, Junr. for and in consideration of the sum of five shillings, current money to him in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted bargained and sold, aliened and confirmed unto the said Roger Perry his heirs and assigns forever all that tract of land lying and being in Allegany County and containing three hundred and eighty four acres, called Cherry Hill, surveyed for Brooke Beall the twenty fifth day of Ap'l seventeen hundred and seventy four. Beginning in the center between three bounded trees a Locust, white oak & ash standing on a rising about one mile Westerly of Buffalow Run and about five or six miles Southerly of Jacob Frowman's Mills and running thence South eighty degs., East one hundred perches, South thirty degrees East sixty perches, East seventy three perches, North sixty eight perches, North sixty eight degrees, West one hundred and seventy six perches, East eighty perches, West one hundred perches, South fifty three degrees, West seventy two perches South four degrees, West twenty eight perches, South forty six degrees, West forty six perches, West one hundred and twenty perches, South twelve degrees, West eighty six perches, South sixty seven degrees, East sixty perches South fifty perches, South twenty nine degrees East sixty four perches,
1291 North seventy one degrees, East one hundred perches, North sixteen degrees east one hundred and thirty four perches, then to the beginning, Together with all the improvements, profits and advantages thereunto belonging or in any wise appertaining. To have and to hold the aforesaid land and premises with its appur-

tenances unto him the said Roger Perry his heirs and assigns forever, and the said William Deakins Junr. doth by these presents covenant grant and agree to and with the said Roger Perry his heirs and assigns that he the said William Deakins Junr. will warrant and forever defend the aforesaid land and premises against all person or persons whatever claiming any right or title thereto by from or under him the said William Deakins, Junr., his heirs, executors and administrators unto him the said Roger Perry his heirs and assigns forever according to the true intent and meaning of this deed.

In Witness Whereof the said William Deakins, Junr. hath hereunto set his hand and seal the day and year first above written.

WILLIAM DEAKINS, JUN'R. [SEAL.]

Signed, Sealed & Delivered in the presence of
THOS. CORCORAN.
LLOYD BEALL.

On the back of which deed were this Indorsement, to wit:—Rec'd, the day and the date of the within Indenture the sum of five shillings current money being the consideration money therein mentioned.

WILLIAM DEAKINS, JUN'R.

Witness:
THOS. CORCORAN.
LLOYD BEALL.

MONTGOMERY COUNTY,
State of Maryland, set:

On the thirtieth January, 1798, seventeen hundred and ninety eight, before us two of the Justices of the Peace for the County aforesaid, and acknowledged the within Indenture of writing to be his act and deed & the Land and Premises therein mentioned to be the right, title and estate of him the within named Roger Perry
1292 his heirs and assigns forever. At the same time came Jane wife of the said William Deakins Jun'r, and being by us privately examined out of the hearing of her said husband, she did willingly and freely relinquish her right of Dower for and to the within land and premises unto the said Roger Perry his heirs and assigns forever and acknowledged she did the same without being induced thereto by fear or threats of ill usage by her said husband or fear of his displeasure.

Taken and acknowledged before the words *on* figures 1798 being first interlined.

THOS. CORCORAN.
LLOYD BEALL.

MARYLAND, *Montgomery County, To wit:*

I hereby Certify that Thomas Corcoran and Lloyd Beall, Gents, before whom the aforegoing acknowledgments appears to have been made and whose names are thereto subscribed, were at the time and now are two of the Justices of the Peace in and for Montgomery

County duly commissioned and qualified, and whose acts as such due faith and credit is and should be given as well in Courts of Justice as thereout.

In Testimony Whereof I have hereto set my hand and affixed the Publick Seal of Montgomery County this 14th day of February Anno Domini 1798.

[SEAL.] O. UPTON BEALL,
Cl'k Montgomery County Court.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, State aforesaid, hereby certify that the above and foregoing is a true copy of Deed recorded in Liber. "B" folio 488 &c.
1293 one of the Land records of said Allegany County.

In Testimony Whereof I hereto Subscribe my name and affix the Seal of said Circuit Court this 15" day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

Endorsed: William Deakins Jr. To Roger Perry Cert. Copy of Deed. Exhibit Brown No. 54. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1294 EXHIBIT BROWN NO. 55.

The following Deed was recorded May 29" 1822.

This Indenture made and executed this twenty ninth day of May, in the year of our Lord eighteen hundred and twenty two, between George Bruce, Esq. late Sheriff of Allegany County of the one part and John King of Franklin County and State of Pennsylvania of the other part, Witnesseth:

Whereas on the eleventh day of December in the year of our Lord eighteen hundred and twenty, a certain writ of the State of Maryland of *Fi-ra Facias* did issue fourth out of the Court of Appeals for the Western Shore at the City of Annapolis, to the Sheriff of Allegany County aforesaid directed, reciting, that whereas at a County Court began and held at Cumberland in and for Allegany County on third Monday of April in the year of our Lord one thousand eight hundred and eighteen a certain John King surviving partner of Thomas L. Dunn and John King, by the Judgment of the same Court, recovered against a certain Thomas I. Perry and Roger Perry late of Allegany County, as well the sum of four thousand dollars, current money, a certain Debt as the sum of eight thousand dollars for his damages which he had sustained, as well as by reasons of the detention of that Debt, as for his costs and charges by him about his suit, in that behalf laid out and expressed, whereof the said Thomas I. Perry and Roger Perry are convict as by inspecting the records of proceedings of the same Court, brought before the Court of Appeals for the Western Shore at the City of Annapolis, by reason of errors alleged to have

been therein, manifestly appears, And Whereas it hath been adjudged by the said Court of Appeals at the City of Annapolis aforesaid on the second Monday of June in the year of our Lord one thousand eight hundred and twenty, that the said judgment,
1295 given in form aforesaid be in all things affirmed and ratified, and that the said John King, surviving partner as aforesaid might have execution against the said Thomas I. Perry and Roger Perry for as well as the Debt, damages, costs and charges aforesaid, as adjudged unto him in the said County Court, as also for the sum of nine dollars, sixty two cents for his damages, cost and charges by him sustained by reason of delaying the Execution of the Judgment aforesaid by means of the prosecuting a certain writ of the said State by the Thomas I. Perry and Roger Perry, before the said Court of Appeals for the correcting of errors of and upon the premises whereof the said Thomas I. Perry and Roger Perry are convict as of receives it like wise appeareth. The said Sheriff was therefore commanded that of the goods and chattels, lands and tenements of the said Thomas I. Perry and Roger Perry being in his bailiwick, he should cause to be made and levied the Debt, damages, costs and charges aforesaid and that he should have those sums of money, before the said Court of Appeals, to be held at the City of Annapolis on the second Monday in June then next, to render unto the said John King, surviving partner, as aforesaid the Debt, Damages, costs and charges aforesaid: and that the said Sheriff should also have then and there that writ, on the second Monday of June, in the year of our Lord one thousand eight hundred and twenty one, the said Sheriff made return to the said Court of Appeals, that by virtue of the said writ to him directed for that purpose, he had taken all that tract or parcel of land called "Cherry Hill" also all the following lots or parcels of lying and being in the Town of Cumberland, to-wit: Lot number three, together with the improvements consisting of a large and commodious brick dwelling house and Ware house, Lot Number ninety four, Lot number ninety five, Lot number one hundred and forty six, Lot number one hundred
1296 and forty seven, lot number one hundred and forty nine and lot number one hundred and fifty lying and being in the County of Allegany and State aforesaid of the land of the said Roger Perry in his bailiwick, being to satisfy unto the said John King surviving partner as aforesaid, the Debt, Damages, costs and charges aforesaid in the said writ mentioned which sale lands and tenements remained in his hand unsold for want of buyers, so that the said debt damages, costs and charges he could not have as he was by the said writ commanded: And Whereas also on the fifteenth day of February in the year of our Lord one thousand eight hundred and twenty two, a certain other writ of the said State of Maryland of *Venditioni Exponas* did issue forth out of said Court of Appeals for the Western Shore at the City of Annapolis to George Bruce, Esquire, late Sheriff of Allegany County directed, reciting the premises as wherein before set forth, whereby the said Sheriff was commanded, that the said lands and tenements so as aforesaid

taken he exposed to sale, and the money therefrom arising he should have before the said Court of Appeals to be had at the City of Annapolis the second Monday of June then next to render unto the said John King, surviving partner as aforesaid, the Debt, Damages, Costs and charges aforesaid and also such costs as have occurred on the said Writ of *Fi-ra Facias* and that he should have then and there that Writ &c., on which said second Monday of June in the year of our Lord one thousand eight hundred and twenty two. The said George Bruce Esquire, late Sheriff of Allegany County aforesaid, did make return to the said Court of Appeals, that by and in virtue of the said Writ of *Venditioni Expona-* to him directed for that purpose after giving twenty days previous notice of the time, place, manner and terms of sale by advertisement set up at
1297 the Court house door of said County also at the houses of Alexander Sanford And Christian Krepps, public places in said County near the place of sale, and also by advertisements published during that time in the "Western Herald" a paper printed in Cumberland in said County and having a General Circulation in said County, of the same, he did on Saturday the thirteenth day of April in the year of our Lord eighteen hundred and twenty two, at the House of Alexander Sanford in the Town of Cumberland in said County offer at public sale to the highest bidder all the right, title and estate of the said Roger Perry in and to the following lands and tenements lying in the County and State aforesaid to wit: A tract of land called "Cherry Hill" containing three hundred and eighty four acres, with the improvements, and all those lots or parcels of land lying in the town of Cumberland in the said County, and known and distinguished on the General Plat of the said town of Cumberland by the Numbers 3, 94, 95, 146, 147, 149 & 150 together with all and singular the buildings and improvements thereon, at which said sale John King of the Town of Chambersburg in the State of Pennsylvania became the highest bidder and purchaser, of the tract of land called "Cherry Hill" at and for the sum of one hundred and seventy two dollars, of lot number three in the town of Cumberland with the improvements thereon, consisting of a large and commodious brick dwelling house and Ware House at and for the sum of fifteen hundred dollars, of lots number-ninety four, ninety five, one hundred and forty six, one hundred and forty seven, one hundred and forty nine, and one hundred and fifty in the town of Cumberland at and for the sum of fifty dollars each, and that the said John King hath since paid the purchase money to the said George Bruce Esquire, late Sheriff as aforesaid, and
1298 is now desirous of obtaining a title to the said lands and tenements in consequence thereof. Now This Indenture Witnesseth, that for and in consideration of the premises and of the sum of five dollars current money of the United States to the *United States to the* said George Bruce, late Sheriff as aforesaid in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said George Bruce late Sheriff as aforesaid, hath granted, bargained and sold and by these

presents doth grant, bargain and sell unto him the said John King his heirs and assigns, the said tract of land lying in Allegany aforesaid called "Cherry Hill" containing three hundred and eighty four acres, also all the following lots or parcels of land lying and being in the Town of Cumberland to wit: Lot Number Three together with the improvements, consisting of a large and commodius brick dwelling House and Ware house, Lot number ninety four, Lot No. ninety five, Lot Number one hundred and forty six, Lot Number one hundred and forty seven, lot Number one hundred and forty nine, and lot number one hundred and fifty so as aforesaid taken on the Writ of *Fiere Facias* aforesaid and so as aforesaid Exposed to sale in virtue of the said Writ of *Venditinoi Exponas* with the appurtenances thereunto belonging, to have and to hold the said tract of land called "Cherry Hill" and the said lots of ground in the town of Cumberland to wit Lots 3, 94, 95, 146, 147, 149, & 150 with the appurtenances unto the said John King his heirs and assigns, to the only proper use, and behoff of the said John King his heirs and assigns forever, and to and for no other use intent or purpose whatsoever.

In Testimony whereof the said George Bruce, late Sheriff as aforesaid hath hereunto set his hand and affixed his seal, the day and year first hereinbefore written.

1299 GEORGE BRUCE, *Late Sheriff.* [SEAL.]

Signed Sealed and acknowledged in the presence of
CHAS. F. BROADHAG.
JNO. McNEIL.

STATE OF MARYLAND,
Allegany County, ss:

Be it remembered that on this twenty ninth day of May, in the year of our Lord eighteen hundred and twenty two, before the subscribers, two of the Justices of the Peace in and for the County and State aforesaid, personally appeared George Bruce, Esquire, late Sheriff of Allegany County aforesaid, grantor within named and acknowledged the within and foregoing deed or instrument of writing to be his act and deed and the land, lots and tenements therein described, and thereby bargained and sold or intended so to be, to be the right and estate of the within named grantor John King his heirs and assigns forever, according to the true intent and meaning of the said instrument and of the Acts of Assembly in such case made and provided.

Acknowledged before
CHARLES F. BROADHAG.
JNO. McNIEL.

STATE OF MARYLAND,
Allegany County, To wit:

I, John W. Young, Clerk of the Circuit Court, in and for Allegany County, state aforesaid, hereby certify that the above and fore-

going is a true copy of deed recorded in Liber L. Folio 427 one of the Land records of said Allegany County.

In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court this 15″ day of July A. D. 1907.

[SEAL.] J. W. YOUNG, *Clerk.*

1300 Endorsed: George Bruce Sheriff To John King Cert. Copy of Deed. Exhibit Brown No. 55. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1301 EXHIBIT BROWN No. 56.

Charles Peale Polk and Raphael Peale, Their Patent, "The Granery," 331½ Acres.

THE STATE OF MARYLAND, &c.:

Know Ye that Whereas George French on the twenty fifth day of April seventeen hundred and seventy had surveyed for him a tract of Land lying then in Frederick but now in Washington County called "The Granery," containing three hundred and thirty one acres and one half acre by virtue of so much part of a Special Warrant for four hundred and ninety acres and one half acre, granted him out of the late Proprietarys land office, according to the conditions of Plantation the twelfth day of March, seventeen hundred and seventy four as appears:—

That the said George French by an assignment, dated the seventh day of October, seventeen hundred and seventy four, made over all his right, title, interest, property and estate of in and to the Certificate of the said tract of land unto a certain Saint George Peale his heirs and assigns forever; and the said Saint George Peale in like manner afterwards, to wit, on the sixth day of June seventeen hundred and seventy eight, made an assignment of all his right, title and interest of the same Certificate unto his two Nephews Charles Peale Polk and Raphael Peale and desired that Patent might be issued in their names for the said land, and the right of the Proprietary being now vested in the State of Maryland.

The said State, Doth hereby Grant unto him the said Charles Peale Polk and Raphael Peale the aforesaid tract or parcel of land called "The Granery," lying in Washington County aforesaid—

Beginning at a bounded White Oak standing near a Spring at the head of a hollow descending into the West side of Buf-
1302 felow Run about four or five miles above the mouth of said run and about twenty or thirty perches South of a path that leads from Richard Hall's to the meeting house on Sandy Creek Glades and about a mile and a half Westwardly of said Hall's house and running thence South, thirty degrees East, forty perches; South, twenty six degrees West, forty three perches, South, eighty degrees West, one hundred and ninety four perches, North, ninety four perches; North East, three hundred and fifty eight perches; South sixty one degrees East, eighty four perches; South, twenty six de-

grees West, two hundred and sixty perches to the end of the first line of this survey; then with a straight line to the beginning—

Containing three hundred and thirty one and a half acres, according to the Certificate of Survey thereof, taken and returned into the Land Office bearing date the twenty fifth day of April, seventeen hundred and seventy four, and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging; To Have and to Hold one undivided moiety or half part of the said tract of land unto him the said Charles Peale Polk his heirs and Assigns forever; And To have and To Hold the other undivided moiety or half part of the said tract of land unto him the said Raphael Peale his heirs and assigns forever—

Given under the Great Seal of the State of Maryland this tenth day of January, seventeen hundred and Eighty eight.

Witness the Honorable John Rogers Esquire, Chancellor—

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

1303 LAND OFFICE OF MARYLAND, *sct:*

I hereby certify, that the aforegoing is a true copy of the Patent for "The Granery," 331½ acres as recorded in Liber I. C. No. C. folio 316, one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 22" day of June, eighteen hundred and ninety seven.

[SEAL.] WM. O. MITCHELL,
Commissioner of the Land Office.

Beverly Randolph, Esq., Lieutenant Governor of the Commonwealth of Virginia, to all to whom these presents come, Greeting:

Know ye that by virtue of & in consideration of part of an Office Treasury Warrant Number 20989 paid the 1st day of December 1783 there is granted by the said Commonwealth unto William Deakins a certain tract or parcel of land containing 138 acres by survey bearing date the 5th day of December 1785 lying & being in the County of Monongalia and Bd. as follows to wit. Beg. at a Poplar tree standing on the west side of a spring run near its head that empties into Buffalo Run on the north side of Nettle Ridge—and running thence S. 45° W. 20 ps. to a Chestnut three thence S. 30° E. 120 ps. to a red Oak Poplar & W. Oak S. 60° E. (100 ps?) to 3 Black Oaks N. 62° E. 80 ps. to a Locust Ash & maple tree N. 43° 30′ W. 237 ps. to Beg.

Pat. Aug. 21st 1787

Endorsed: Copy Patent, "The Granary" 331½ Acres. Exhibit Brown No. 56. Supreme Court U. S. No. 1. Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. Cost $.130.

1304 EXHIBIT BROWN No. 57.

Thomas Hall, His Patent, "Ashbey's Cove," 250 Acres.

THE STATE OF MARYLAND, &C.:

Know Ye that Whereas Samuel Chase, Esquire, had on the thirteenth day of April seventeen hundred and seventy four surveyed and laid out for him a tract or parcel of land called Ashbey's cove," lying then in Frederick but now in Washington County, and containing two hundred and fifty acres by virtue of so much part of a Special Warrant for two thousand acres granted him out of the Proprietarys Land Office according to the Conditions of Plantation the twenty fifth day of March seventeen hundred and seventy four, as appears:—

That the said Samuel Chase, Esquire, by an assignment dated the fifteenth day of January seventeen hundred and eighty five transferred and made over all his right title, interest and claim of in and to the Certificate of the aforesaid survey and the land therein mentioned unto Thomas Hall of Harford County and his heirs, and the said Thomas Hall having pursuant to Act of Assembly, paid to the Treasurer of the Western Shore the sum of one pound two shillings and six pence current money for some improvements on the said land—

The State of Maryland Doth hereby grant unto him the said Thomas Hall the aforesaid tract or parcel of land called "Ashbey's Cove," lying in Washington County—

Beginning at two bounded Wild Cherry Trees standing about three perches from the North side of Snowy Glade Creek, and running thence North, two hundred and eighty six perches; North, seventy six degrees West, one hundred and twenty perches; South, ten degrees and a half degree West, two hundred and seventy
1305 two perches; then with a straight line to the beginning—

Containing two hundred and fifty acres, according to the Certificate of Survey thereof, taken and returned into the Land Office, bearing date the thirteenth day of April seventeen hundred and seventy four, and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging, To Have and To Hold the same unto him the said Thomas Hall his heirs and assigns forever—

Given under the Great Seal of the State of Maryland, this fourteenth day of May, seventeen hundred and eighty seven—

Witness the Honorable John Rogers, Esq. Chancellor.

W. SMALLWOOD. [THE GREAT SEAL.] ROGERS, *Chan'r.*

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify, that the aforegoing is a true copy of the Patent for "Ashbey's Cove," 250 acres, as recorded in Liber I. C. No. C. folio 247 &c., one of the record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 21" day of October, eighteen hundred and ninty nine.

[SEAL.] WM. O. MITCHELL,
Commissioner of the Land Office.

[10 ct. Stamp.]

Endorsed: Copy Patent, "Ashbey's Cove" 250 acres. Exhibit Brown No. 57. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1306 EXHIBIT BROWN No. 58.

James Wignell, His Patent, "Non Pariel," 2482 Acres.

THE STATE OF MARYLAND, &c.:

Know Ye that Whereas Jonathan Boucher on the fifth day of September seventeen hundred and seventy four had surveyed for him a tract or parcel of land called "Non Pariel," lying then in Frederick now in Washington County and containing two thousand four hundred and eighty two acres, by virtue of eighteen hundred and sixty two acres part of a Common Warrant for two thousand acres dated the twenty sixth day of March seventeen hundred and seventy four, and fifty acres part of a Special Warrant for four thousand acres dated the twenty fifth day of the month and year last aforesaid, both granted out of the Proprietary's Land Office, according to the conditions of Plantation then in force as appears:

That the said Jonathan Boucher by an assignment dated the tenth day of March seventeen hundred and seventy five, made over all his right title and interest of in and to the Certificate of the aforesaid Land unto William Hayward, who in like manner by an assignment dated the twenty seventh day of October seventeen hundred and seventy eight, made over all his right, title and interest of in and to the Certificate of the said Land unto James Clark of Baltimore County—

That the said James Clark, pursuant to Act of Assembly, paid to the Treasurer of the Western Shore, the sum of forty seven pounds ten shillings current money Caution for the quantity in the above Survey over and above the Warrant, and afterwards, to wit, on the twenty seventh day of September seventeen hundred and
1307 eighty six, made an assignment of all his right and title to the said Land unto James Wignell of Baltimore Town, and the right of the Proprietary being now vested in The State of Maryland,

The said State Doth hereby Grant unto him the said James Wignell all that the aforesaid tract or parcel of Land called "Non Pariel," lying in Washington County—

Beginning at three bounded Hickory Trees, standing on the West side of a Hill, sixteen perches and one quarter of a perch on the East side of the old road that leads from the Dunkard Glades to the

Dunkard Bottom, the above Trees standing about forty perches from a meadow, known by the name of Snows Glade, about two or three miles from Murleys Glades, and running thence North, one hundred and fourteen perches; North, sixty degrees East, one hundred and twenty perches; North, forty five degrees East, twenty four perches; North, twelve degrees East, one hundred and ten perches; North, one hundred and forty eight perches; North, sixty degrees East, one hundred and fourteen perches; North, sixty one perches; North, thirty degrees West, fifty perches; North, thirty degrees East, sixty five perches; North, twenty degrees West, two hundred and forty one perches; South, fifty degrees West, thirty five perches; West, one hundred and seventy six perches; South, fifty seven degrees West, fifty perches; South, twenty five degrees West, seventy eight perches; South, seventy five degrees West, fifty four perches; South, five degrees West, forty five perches; south, two degrees West, sixty six perches; South, one hundred and seventy two perches; South, twenty four degrees West, one hundred and ninety two perches; South, thirty five degrees West, twenty perches; South, thirty degrees East, one hundred and twenty perches; South, five degrees West, forty three perches; South, fifteen degrees East,
1308 one hundred and seventy perches; South, fifty degrees West, forty seven perches; South, thirty degrees East, forty four perches; South, twenty degrees West, eighty perches; South, forty perches; South, sixty four degrees East, forty perches; South, forty six degrees East, one hundred and twenty perches; South, forty degrees West, eighty perches; South, nineteen degrees West, one hundrd and sixty perches; North, sixty three degrees East, one hundred and sixty perches; North, eighty five degrees East, ninety one perches; North, forty perches; North, thirty degrees East, thirty six perches; North, eighty degrees East, ninety perches; then with a straight line to the beginning.

Containing two thousand four hundred and eighty two acres, according to the Certificate of Survey thereof, taken and returned into the Land Office bearing date the fifth day of September, seventeen hundred and seventy four, and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging To Have and To Hold the same unto him the said James Wignell his heirs and assigns forever—

Given under the Great seal of the State of Maryland, this twenty ninth day of September, seventeen hundred and eighty six—

Witness the Honorable John Rogers, Esquire, Chancellor

W. SMALLWOOD. [THE GREAT SEAL.] J. ROGERS, *Chan'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the aforegoing is a true copy of the Patent for "Non Pariel," 2482 acres, as recorded in Liber I. C. No. C. folio 1 &c. one of the record Books of this Office.

In testimony whereof, I have hereunto set my hand and
1309 affixed the Seal of the Land Office, of Maryland, this 26" day of October, eighteen hundred and ninety nine.

[SEAL.]

WM. O. MITCHELL,
Commissioner of the Land Office.

[10 ct. stamp.]

Endorsed: Copy of Patent "Non Pariel" 2482 acres. Exhibit Brown No. 58. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1310 EXHIBIT BROWN No. 59.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789,
By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers" entitled to land westward of Fort Cumberland, contains among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
James Evans.	Private. Third.	316.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said land office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Receord, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me
1311 directed, bearing date the 11th June 1787, for the purpose of surveying and laying out the reserved land to the west-

ward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington County, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 316 Beginning at the end of one hundred and twenty two perches on the third and last line of a tract of land called "The Royal Charlotte" and running with said third line South, twenty six degrees West, two hundred and two perches; then North, one hundred and eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 316. Exhibit Brown No. 59. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1312 EXHIBIT BROWN NO. 60.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of The Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers," entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Thomas Daley.	Private. Second.	317.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

1313

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 317.

Beginning at the beginning of Lot 316 and running *and running* with the third line of "The Royal Charlotte" reversed North, twenty six degrees East, eighty perches; West, one hundred and twenty two perches; South, seventy perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

R. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 317. Exhibit Brown No. 60. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1314 EXHIBIT BROWN No. 61.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers," entitled to land westward of Ford Cumberland, contains, among others the following entry, viz:

Names.	Rank and Reg't.	Number.
David Henderson.	Lee's Legion.	318.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved Lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof (of Ledger A), contains as follows viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May,
1315 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787 for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 318 Beginning at the end of the first line of Lot 317 and running North, twenty-six degrees East, forty-two perches to the end of the second line of "The Royal Charlotte" then with the second line reversed South, sixty-four degrees East, twenty perches to the end of the fourth line of "Small Meadows" and with it reversed North, seven degrees East, twenty-seven perches; then North, eighty degrees West, sixty-five perches; South, seven degrees West, thirteen perches; West, ninety-six perches; South, fifty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name
1316 and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 318. Exhibit Brown No. 61. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1317 EXHIBIT BROWN NO. 62.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.
By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers," entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Thomas Long.	Private. Third.	1237.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said land office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A°), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution
1318 of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1237.

Beginning at the end of three hundred and twenty-seven perches on the third line of a tract of land called "Thomas and Ann" surveyed for Thomas Johnson, Esquire, and running South, twenty-eight degrees West, two hundred and four perches; North, one hundred and eighty-two perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

1319 In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1237. Exhibit Brown No. 62. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1320 EXHIBIT BROWN No. 63.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and

Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers", entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Abraham Manning.	Private. Third.	1238.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Teste:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution
1321 of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1238

Beginning at the end of the second line of Lot 1237 and running North, eighty perches; East, one hundred perches; South, eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1238. Exhibit Brown No. 63. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1322 EXHIBIT BROWN No. 64.

STATE OF MARYLAND, *sct:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers", entitled to land westward of Fort Cumberland, contains among others, th- following entry, viz:

Names.	Rank and Reg't.	Number.
Robert Shipley.	Private. Second.	1239.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of
1323 the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787 for the purpose

of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B".

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1239.

Beginning at the end of the first line of lot 1238 and running North, eighty perches; East, one hundred perches; South, eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September, 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1239. Exhibit Brown No. 64. Supreme Court U. S. No. 1 Original, Oct Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1324 EXHIBIT BROWN No. 65.

STATE OF MARYLAND, *sct:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers", entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
John Manley	Lees' Legion.	1240.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May,
1325 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by the general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1240 Beginning at the end of one hundred and twenty perches on the third line of "Thomas and Ann" and running South, twenty-eight degrees West, two hundred and two perches to the third line of lot 1238; then North, one hundred and eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the foregoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name
1326 and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1240. Exhibit Brown No. 65. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1327 EXHIBIT BROWN No. 66.

STATE OF MARYLAND, *sct:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify that there is deposited in and belonging to the Office aforesaid a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789,

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption "Soldiers," entitled to land westward of Fort Cumberland, contains, among others, the following entry:

Names.	Rank and Reg't.	Number.
Thomas Lovely.	Drum. Rawlings.	1447.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May,
1328 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B".

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1447 Beginning at the end of the second line of a tract of land called "The Diadem" and running North, nine degrees East, thirty perches; South, sixty-nine degrees East, forty perches; North, one hundred and ten perches; West, one hundred perches; South, ninety-five perches to the third line of "The Diadem" and with it reversed to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

1329 Endorsed: Copy Lot No. 1447. Exhibit Brown No. 66. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1330 EXHIBIT BROWN NO. 67.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1787,

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers," entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Walter Miles.	Corp'l. First.	1448.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands

westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test: JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20 May, 1787, and a commission from the Governor and Council to me directed, bearing date the 11th June 1787, for the purpose of sur-
1331 veying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B".

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1448 Beginning at a bounded Chestnut marked 5118 standing at the end of the fourth line of Lot 1447 and running North, eighty perches; East, one hundred perches; South, eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September, 1906.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1448. Exhibit Brown No. 67. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1332 EXHIBIT BROWN No. 68.

STATE OF MARYLAND, *sct:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them

agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers", entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Samuel Young.	Private. Sixth.	1449.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me
1333 directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1449.

Beginning at the beginning tree of Lot 1448 and running North, eighty perches; West one hundred perches; South, eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September, 1906.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1449. Exhibit Brown No. 68. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1334 EXHIBIT BROWN No. 69.

STATE OF MARYLAND, *sct:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers", entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.		Number.
John Williams.	Private.	First.	1450.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test: JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787,
1335 and a commission from the Governor and Council to me directed, bearing date the 11th, June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each lying and being in Washington county and State aforesaid and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1450.

Beginning at the end of the first line of Lot 1449 and running North, eighty perches; East, one hundred perches; South, eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September, 1906.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1450. Exhibit Brown No. 69. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1336 EXHIBIT BROWN NO. 70.

STATE OF MARYLAND, *sct:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789,

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers" entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Jacob Hindes.	Private. Fourth.	1451.

And I do further certify that two other Record Books deposited in and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me di-
1337 rected, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1451

Beginning at the beginning of Lot 1450 and running North, eighty perches; West, one hundred perches; South, eighty perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September, 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1451. Exhibit Brown No. 70. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1338 EXHIBIT BROWN No. 71.

STATE OF MARYLAND, *act:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789,

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers", entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
John Sloop.	Private. Sixth.	1462.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B", received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me di-
1339 rected, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1462

Beginning at the end of the first line of lot 1461 and running South, one hundred and seventy-four perches; West, forty-six perches; North, one hundred and seventy-four perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1462. Exhibit Brown No. 71. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1340 EXHIBIT BROWN No. 72.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers," entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Joshua Harvey.	Lees' Legion.	1463.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B," received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L O. W. S.

And in a certain part thereof, (of Ledger A), contains as follows, viz:

December 10th, 1787 In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th, May, 1787, and a commission from the Governor and Council to me
1341 directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 1463.

Beginning at a bounded tree of Lot 1448 and running West, one hundred and forty-six perches; South, twenty perches; East, ten perches; South, sixty-one degrees East, one hundred and fifty-four perches; then by a straight line to the beginning. Containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 1463. Exhibit Brown No. 72. Supreme Court U. S. No. 1 Original. Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1342 EXHIBIT BROWN No. 73.

STATE OF MARYLAND, *set:*

LAND OFFICE OF MARYLAND.

I, E. Stanley Toadvin, Commissioner of the Land Office, do hereby certify, that there is deposited in and belonging to the Office aforesaid, a certain Record Book, entitled "Record of the Officers and Soldiers" entitled to land westward of Fort Cumberland, in Washington county, with the numbers of the lots, drawn for them agreeably to an Act of the General Assembly, passed November Session, 1788.

Received into the Land Office the 14th November, 1789.

By JOHN CALLAHAN,
Reg. L. O. W. S.

And that the said Record Book, in a certain part thereof, under the caption of "Soldiers," entitled to land westward of Fort Cumberland, contains, among others, the following entry, viz:

Names.	Rank and Reg't.	Number.
Francis Ware.	Lieutenant First.	2952.

And I do further certify that two other Record Books deposited in, and belonging to, the office aforesaid, entitled Ledgers "A" and "B" received into the said Land Office, according to the following receipt upon the first pages of each thereof, viz:

Received into the Land Office as a Record, agreeably to the directions of an Act of Assembly, to dispose of the reserved lands westward of Fort Cumberland, in Washington county, &c., passed November session, 1788.

Test:

JOHN CALLAHAN,
Reg. L. O. W. S.

And in a certain part thereof, (of Ledger A, contains as follows, viz:

December 10th, 1787. In compliance with a Resolution of the General Assembly of the State of Maryland, of the 20th May, 1787, and a commission from the Governor and Council to me
1343 directed, bearing date the 11th June, 1787, for the purpose of surveying and laying out the reserved land to the westward of Fort Cumberland, into convenient lots of 50 acres each, &c.

I hereby certify, that I have carefully surveyed, for the State aforesaid, 4165 lots of 50 acres each, lying and being in Washington county, and State aforesaid, and on the manors, reserves and confiscated lands to the westward of Fort Cumberland, as will appear by a general plat thereof, and certificates numbered in rotation from 1 to 4165, in this Book, and another entitled Ledger "B."

Pr. FRANCIS DEAKINS.

And also the following entry, viz: Lot 2952.

Beginning at the end of thirty-four perches on the first line of "Cherry Hill" granted to William Deakins, Jr., and running South, one hundred and seventeen perches; East, eighty perches; North, seventy-eight perches to the second line of "Cherry Hill;" then North, thirty degrees West, thirty-four perches; then by a straight line to the beginning, containing Fifty acres.

And I do further certify, that the aforegoing entries have been severally compared and collated with the said original Record Book from which they have been respectively taken, and that they agree and correspond therewith.

In testimony whereof, I have hereto subscribed my name and affixed the seal of the Land Office of Maryland, this first day of September 1906.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Lot No. 2952. Exhibit Brown No. 73. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1344 EXHIBIT BROWN NO 74.

Beverly Randolph, Esquire, Lieut. Governor of the Commonwealth of Virginia, to All to Whom these Presents shall Come, Greeting:

Know Ye That by virtue and in consideration of part of a land office treasury Warrant No. 20989 issued the 1st day of December 1783, there is granted by the said Commonwealth unto William Deakins a certain tract or parcel of land containing 138 acres, by survey bearing date the 5th day of December, 1785, lying and being in the County of Monongalia and bounded as followeth—to-wit: Beginning at a poplar tree standing on the W. side of a spring run near its head, that empties into Buffalo run, the N. side of Nettle Ridge and running thence S. 45 W. 80 poles to a chestnut tree, thence S. 30 E. 120 poles to a red oak, poplar and white oak, thence S. 60 E. 100 poles to 3 black oaks, thence N. 62 E. 80 poles to a locust, ash and maple tree, thence N. 42½ W. 237 poles to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said William Deakins and his heirs forever.

In witness whereof, The said Beverly Randolph Esquire, Lieut. Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 21st day of August in the year of our Lord, one thousand seven hundred and eighty seven, and of the Commonwealth the 12th.

[SEAL.] B. RANDOLPH.

STATE OF WEST VIRGINIA:
Auditor's Office, City of Charleston, To-wit:

1345 I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Deakins, dated the 21st day of August, 1787, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under the Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 29th day of July, 1907.

[SEAL.] A. C. SCHERR, *Auditor.*

Endorsed: State of Virginia to William Deakins. Patent for 138 acre tract. "Exhibit Brown No. 74." Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1346 EXHIBIT BROWN NO. 75.

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to All to Whom these Presents shall Come, Greeting:

Know Ye, That by virtue and in consideration of part of a pre-emption treasury Warrant No. 1843, issued the 10th day of November, 1781, there is granted by the said Commonwealth unto William Ashby assignee of John Simpson a certain tract or parcel of land containing 300 acres by survey bearing date the 21st day of March 1785, lying and being in the County of Monongalia on a Main Branch of Yohogania river adjoining the Maryland line and bounded as followeth, to-wit: Beginning at a cherry tree on the W. side of the said branch and running thence N. 61 W. 109 poles S. 51 W. 112 poles S. 84 W. 54 poles S. 37 W. 160 poles S. 18 W. 83 poles S. 55 E. 45¾ poles N. 48 E. 45½ poles E. 77 Poles N. 43¼ E. 300 poles crossing said branch several times to the beginning with its appurtenances.

To Have and to Hold the said Tract or Parcel of Land, with its appurtenances, to the said William Ashby and his heirs forever.

In Witness Whereof, The Said Edmund Randolph Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 2nd day of February in the year of our Lord, one thousand seven hundred and eighty seven and of the Commonwealth the 11th.

[SEAL.] E. RANDOLPH.

1347 STATE OF WEST VIRGINIA.
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to William Ashby dated the 2nd day of February 1787, on file in said Auditor's office among the certified copies of records received from the office of the Register of the Land office at Richmond, Virginia, and deposited in the said Auditor's Office, under the Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 29th day of July, 1907.

[SEAL.] A. C. SCHERR, *Auditor.*

Endorsed: State of Virginia to William Ashby. Patent for 300 acre tract. "Exhibit Brown No. 75." Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1348 EXHIBIT BROWN No. 76.

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to All to Whom these Presents shall Come, Greeting:

Know Ye, That by virtue and in consideration of part of a land office treasury Warrant No. 21443 issued the 23rd day of December 1783, there is granted by the said Commonwealth unto John Hooker assignee of Robert Hooker who was assignee of David Graham a certain tract or parcel of land containing 2251 acres by survey bearing date the 20th day of November 1786, lying and being in the County of Monongalia, on a branch that empties into Snowy Glade Creek adjoining a survey that belongs to William Ashby called his sugar camp survey on the E. side and extending along both sides of the Snowy Glade Creek, and bounded as followeth, to-wit: Beginning at a hickory, red oak and chestnut and running thence N. 23 W. 207 poles to a white oak thence N. 5 W. 70 poles to a beech, thence N. 27 W. 32 poles to two sugar trees and a beech, thence S. 40 W. 58 poles to a pine thence S. 23 W. 48 poles to two beeches and a round tree thence N. 54 W. 88 poles to a pine thence N. 40 W. 106 poles to a white oak thence N. 80 E. 44½ — to a maple, thence N. 200 poles to two pines and a red oak, thence N. 44 W. 160 poles to a sugar tree, thence N. 81 W. 107 poles to a white oak, thence S. 59 W. 203 poles to a birch and chestnut, thence S. 73 W. 20 poles to a maple and cucumber tree, thence N. 41 W. 71 poles to two chestnuts, thence N. 42 E. 280 poles to two maples, thence S. 48 E. 20 poles to a white oak, thence S. 24 E. 24 poles to a maple and service, thence S. 81 E. 449 poles to a maple, white oak and hickory, thence N. 56 E. 74 poles to a maple, birch and ash, thence S. 54 E. 108 poles to a maple thence S. 81 E. 97 poles to a sugar tree, thence S. 65 E. 65
1349 poles to a white walnut, thence S. 52 E. 28 poles to a maple, thence S. 4 E. 65 poles to a red oak, thence S. 8 W. 486 poles to a red oak, white oak and chestnut, thence S. 67¼ W. 230 poles to the beginning with its appurtenances.

To Have and to Hold the said Tract or Parcel of Land, with its appurtenances, to the said John Hooker and his heirs forever.

In Witness Whereof, The said Edmund Randolph Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the Lesser Seal of the said Commowealth to be affixed at Richmond, on the 17th day of April in the year of our Lord, one thousand seven hundred and eighty eight and of the Commonwealth the 12th.

[SEAL.] EDM. RANDOLPH.

STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to John Hooker dated the 17th day of April 1788, on file in said Auditor's Office, among the certified copies of records received from the office of the Register of the Land

office at Richmond, Virginia, and deposited in the said Auditor's Office, under the Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 29th day of July, 1907.

[SEAL.] A. C. SCHERR, *Auditor.*

Endorsed: State of Virginia to John Hooker. Patent for 2251 acre Tract. "Exhibit Brown No. 76." Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1350 EXHIBIT BROWN No. 77.

Beverly Randolph, Esquire, Governor of the Commonwealth of Virginia, to All to Whom these Presents shall Come, Greeting:

Know Ye, That by virtue and in consideration of part of 3 land office treasury Warrants No. 15,577 issued 3rd of May, No. 15,260 issued the 7th day April, and No. 20,989 issued the 1st day of December, all in the year 1783 *alos* parts of four land office treasury Warrants No. 6,180, 6,181, 6,198 and 6,195 all issued the 10th day of February 1781, there is granted by the sd. Commonwealth unto Fran. Deakins and William Deakins a certain tract or parcel of land containing 6000 A. by survey bearing date the 10th day of May, 1788, lying and being in the County of Monongalia on and between the head of *Murley's* and *Snow* Glade Creek- joining the head line of Maryland including a marsh *and* between the Snuggy Mountain and pine swamps on the waters of the Yohogania River including the ridge and bounded as followeth, to-wit: Beginning at a red oak, it being the beginning tree of a survey of 400 A. made for Geo. Ashley and running with his line S. 72 W. 200 ps. to two white oaks and hickory a corner of Francis and Wm. Deakins' survey of 114 A. and with it S. 20 E. 60 ps. to a red oak S. 55 W. 120 ps. to a chestnut thence leaving sd. survey and running S. 74 ps. to a line of Francis and Wm. Deakins' survey of 499 A. and with it S. 70 E. 142 ps. to pointers S. 20 W. 222 ps. to a red oak corner of sd. tract S. 80 W. 115 ps. to a line of Francis and Wm. Deakins' survey of 529 A. with it S. 300 ps. to a poplar thence S. 26 W. 76 ps. to a red oak corner to sd. Deakins' survey of 500 A. and with same reversed *142* E. 196 ps. to a red oak S. 10 E. 30 ps. to a red oak S. 30 W. 72 ps. to 2 sugar trees and a cucumber tree N. 90 ps. to a white oak S. 30 W. 92 ps. to a white walnut, sugar tree
1351 and chestnut tree corner to sd. Deakins' survey of 558 A. thence S. 20 E. 119 ps. to 2 maples E. 171 ps. to a maple service and spanish oak N. 16 E. 586 ps. to 2 chestnut trees corner to Robt. Hooker's survey of 2251 A. and with same S. 42 E. 320 ps. to 1st line of Francis and Wm. Deakins' survey of 508 A. and with it and their other survey of 354 A. N. 327 ps. to a white oak thence N. 5 E. 138 ps. to a white oak 3rd corner of sd. Deakins' survey of 222 A. and with it S. 70 W. 146 ps. to a white oal N. 40 W. 160 ps. to a hickory N. 46 E. 149 ps. to a sugar tree and chestnut corner

of Wm. Ashley's survey of 400 A. and with it N. 27 E. 66 ps. to a chestnut N. 33 W. 70 ps. to a white oak N. 40 E. 52 ps. to a white oak S. 80 E. 175 ps. to a white oak N. 70 E. 58 ps. to a hickory E. 132 ps. to a red oak S. 20 W. 226 ps. to a burch N. 85 W. 110 ps. to a maple S. 45 W. 40 ps. to 3 maples thence S. 80 E. 10 ps. to a round tree S. 20 W. 106 ps. to aforesaid white oak at the head of 21st line of this survey and with it reversed S. 5 W. 138 ps. to a white oak corner of sd. Deakins' survey of 354 A. thence S. 81 E. 122 ps. to a servis and maple corner to Jesse Ashley's survey of 200 A. and with it N. 9 E. 200 ps. to a servis chestnut and sassafras N. *89½* E. 196 ps. to a tract of land called Ashley's *Coal* thence N. 10½ E. 41 ps. to the 6th line of a tract of land called Thomas and *Aren* and with it reversed the 4 following courses N. 26 W. 40 ps. N. 12½ E. 217 ps. N. 82 E. 169 ps. N. 28 E. 70 ps. N. 675 ps. to Albert Gallatin's survey and with it W. 590 ps. to a tract of land patented in Maryland called *nonparil* thence S. 114 ps. to the beginning tree of sd. land called nonparil and with the following lines of it reversed S. 24 E. 371 ps. S. 80 W. 90 ps. S. 30 W. 36 ps. S. 40 ps. S. 85 W. 91 ps. S. 63 W. 206 ps. to Geo. Ashley's survey
1352 of 50 A. and with it S. 42 E. 13 ps. to a chestnut at the end of 3rd line of sd. survey S. 13 E. 108 ps. to a white oak corner to sd. Geo. Ashley's survey of 400 A. thence S. 21 E. 96 ps. to the beginning with its appurtenances.

To have and to hold the said Tract or Parcel of Land, with its appurtenances, to the said Fran. and Wm. Deakins and their heirs forever.

In witness whereof, The said Bev. Randolph Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond, on the 22nd day of September in the year of our Lord, one thousand seven hundred & 89 and of the Commonwealth the 14th.

[SEAL.] B. RANDOLPH.

STATE OF WEST VIRGINIA,
Auditor's Office, City of Charleston, To wit:

I, A. C. Scherr, Auditor of the State of West Virginia, do hereby certify that the foregoing is a true copy of a paper, purporting to be a grant from the State of Virginia to Francis and Wm. Deakins dated the 22nd day of September 1789, on file in said Auditor's office among the certified copies of records received from the Office of the Register of the Land Office at Richmond, Virginia, and deposited in the said Auditor's Office, under the Acts of the Legislature of West Virginia, passed February 24th, 1893, and February 20th, 1897.

Given under my hand and official seal, at Charleston, W. Va., this 29th day of July, 1907.

[SEAL.] A. C. SCHERR, *Auditor.*

1353 Endorsed: State of Virginia to Francis & William Deakins. Patent for 6000 acre Tract. "Exhibit Brown No. 77." Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1354 EXHIBIT BROWN NO. 78.

Copy of Report of Boundary Commissioners Lee and McDonald.

Michler's Report.

1355 *Report of Boundary Commissioners.*

CITY OF WASHINGTON, *December* 21", 1859.

To the Honorable the Legislature of the State of Maryland:

The undersigned Commissioners upon the question of Boundary between the States of Maryland and Virginia, in virtue of the authority of the Acts of Assembly, under which they respectively hold their Commissions, beg leave respectively to report:—

That they met at Washington City on the 18th August, 1858, and made the subjoined application marked A, to the Hon. Secretary of War for the services of an officer of U. S. Engineers to aid them in the discharge of their duties. That in accordance with this request the Honorable Secretary of War kindly and promptly responded by detailing Lieut. N. Michler, U. S. Topographical Engineers. That the Commissioners again met by appointment at New Creek, Va., and with Lieut. Michler proceeded thence to the locality of the Fairfax Stone. The spot and Stone were easily recognized and identified Sept. 19th, 1858, by the Commissioners and Lieut. Michler. The following Gentlemen did them the honor to accompany them, viz:—James R. Partridge, Esqr., Secretary of State of Maryland, Hugh Lennox Bond, Esqr., of Baltimore, Philip Pendleton, Esqr., of Allegheny Co., Maryland, and John Coneway, the guide.

This duty performed, the Commissioners again met September 30, where, in company with Lieut. Michler, they proceeded to the Eastern Shore of Maryland and Virginia. Whilst at Horntown,

Va., the accompanying instructions marked B, and C, for

1356 commencing the duties entrusted to him were agreed upon and given to Lieut. Michler.

The Commissioners met again at Baltimore, October 28th and addressed the additional instructions marked D, to Lieut. Michler. The accompanying report and maps of Lieut. Michler shew the progress of the work up to this date and we submit his estimates as the basis of appropriations for the erection of permanent and prominent monuments to mark such Boundary lines as Said States may concur in establishing.

The Commissioners take this opportunity of acknowledging the zeal and intelligence of Lieut. Michler and of returning to him their thanks for the able manner in which he has discharged his duties and recommend a suitable compensation be made for his services. They are also under great obligations to the Superintendent of the U. S. Coast Survey for much valuable information

contained in a number of tracings of manuscripts, maps of the topography in the vicinity of the Eastern Shore boundary.

THOMAS J. LEE,
Commissioner for Maryland.
ANGUS W. McDONALD,
Commissioner for Virginia.

Here follows the paper marked A, referred to in the aforegoing report, to-wit:—

WASHINGTON, *Augt. 19th*, 1858.

Honorable John B. Floyd, Secretary of War.

1357 SIR: The undersigned Commissioners for the States of Virginia and Maryland to retrace and mark the Boundary Lines between the two States, have the honor to request, with the approbation of the Governors of their respective States, the assistance of the General Government; and that the Colonel of the Corps of Topographical Engineers, U. S. Army be authorized by you to detail an officer of that Corps skilled in Astronomy and furnished with the necessary instruments to be placed in charge of the parties to be employed upon the above duty. It is our desire, should our request be granted, that the officer detailed should not be a native or citizen of either of the two States we represent. We desire to proceed with the execution of the work as early as practicable.

We have the honor to be Sir,
Very respectfully,

ANGUS W. McDONALD,
Comm'r for Virginia.
(Signed) THOMAS J. LEE.
Comm'r for Maryland.

Here follows the paper marked B, referred to in the aforegoing report, to-wit:—

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORNTOWN, ACCOMAC CO., VA., *October 2nd*, 1858.

Lieut. N. Michler, U. S. Top*s*. Eng'rs.

1358 SIR: The Commissioners desire that you proceed at once to obtain by actual survey as accurately as possible, a plat of the old Scarburgh line, traced somewhere about the year 1668, from near the mouth of the Pocomoke to the sounds near the sea, and also a continuation of this line Westwardly, along and near the North Shore of Pocomoke Bay, to Tangier Sound. It is supposed that there are still standing some old marks of the Scarburgh line, but that nevertheless *were* these marks do not exist, a close approximation can be had from the limits of the lands of those persons owning adjacent to it.

You will please therefore ascertain as you progress and mark on your plat as nearly as you can, the names of the proprietors on each side of the line with the limits of their tracts adjoining it, noting the parts of the line that are now acknowledged and adopted as such, and those parts that may still be in doubt. It is inferred, from documents in possession of the Commissioners, that the Commission of 1668, did not mark the line, west of the Pocomoke, and that in all probability you will find no marks to guide you. You must therefore be governed in the direction of your line Westwardly from the Pocomoke to Tangier Sound, by the mean or average direction of the whole line on the East side of the river (the line dividing Worcester from Accomac). It is equally desirable to note along this portion of your work the names of the proprietors and limits on said line of the lands of each, with the location of all dwellings and improvements adjacent, and also the limits of marsh and firm ground upon the Southern side of your line especially. As this preliminary step of the Commission *is mearly* to obtain the best local information, you will, to avoid *miss*-apprehension on the part of those interested, please explain to them the object of your survey.

1359 The originals of your notes and plats you will for the present retain in your possession subject to the future orders of the Commissioners, and transmit to each of them a certified copy of the plat with such explanations as you may deem essential To carry out these instructions you will be allowed to employ one assistant (a surveyor and draughtsman) at a compensation of four dollars per day for the time he may be employed, and such number of laborers as you may deem necessary, having strict regard to economy in your expenditures.

You will please submit an estimate of what amount of funds you will require for the present.

We are Sir, very respectfully,

A. W. McDONALD,
Com'r for Va.
THOS. J. LEE,
Com'r for Maryland.

Here follows the paper marked C, referred to in the aforegoing report, to-wit:—

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORNTOWN, ACCOMAC CO., VA., *October 4th*, 1858.

Lieut. N. Michler, U. S. Tops. Eng'rs.

SIR: At the conclusion of the preliminary examination you are instructed to make by our letter of Octo. 2nd, you will please proceed to the Fairfax Stone, at the head of the North Branch

1360 of the Potomac, as ascertained and identified by us on the 19th September last, and prosecute as far as the season will permit such astronomical observations as may be requisite to deter-

mine the direction of a Meridian line from this point to the Pennsylvania line. As it is not probable that the whole of this line can be traced this fall, you will for the present confine yourself to the astronomical part merely and to establishing as many distant points along the lines as you may deem essential, as checks to the surveyors in tracing and marking the same. For which purpose you are authorized to retain the services of your Assistant at the same compensation and to employ such laborers as you may require. You will please also inform us of the probable amount of funds you may require for this service.

We are Sir, very respectfully,

A. W. McDONALD,
Comr. for Virginia.
THOMAS J. LEE,
Comr. for Maryland.

Here follows the paper marked D, referred to in the aforegoing report, to-wit:

BALTIMORE, *Oct. 28th,* 1858.

Lieut. N. Michler, U. S. Top*s.* Eng'rs.

SIR: In addition to the instructions contained in our joint letter of October 2nd, you will please extend your survey to that portion of Islands in Chesapeake Bay through which the Maryland and Virginia Boundary is supposed to pass between Watkin's point
1361 and Smith's point so as to give the Commissioners as nearly as you can, the names of the landholders upon each side, with the extent of the lands of each along the line—And as it appears that the U. S. Coast Survey topography does not at present include what is now called the mouth of the Pocomoke River, you will please also include that in your surveys, by joining these detached surveys with the nearest Coast Survey Trig-nometrical point, we will be enabled with the aid of that triangulation to *to* locate them accurately upon a general map, if necessary.

ANGUS W. McDONALD,
Com'r on the Part of Virginia.
THOMAS J. LEE,
Com'r on the Part of Maryland.

Mr. Michler will please send each of us accurate copies of the above by mail.

A. W. McDONALD.

Here follows the Report of N. Michler, Lieutenant Topographical Engineers, United States Army, in charge of Survey referred to in the aforegoing report of Commissioners, to-wit:

MARYLAND & VIRGINIA BOUNDARY SURVEY OFFICE,
WASHINGTON, D. C., *December 20th*, 1859.

Thomas J. Lee, Esqr., Commissioner for Maryland; Angus W. McDonald, Esqr., Commissioner for Virginia.

GENTLEMEN: Agreeably to orders from the War Department, dated Adjutant General's Office, Washington, August 20th,
1362 1858, I had the honor of being assigned, in accordance with your request, to the special service of assisting you in tracing and marking the Boundary Lines between your respective States, Maryland and Virginia, copies of said orders were enclosed to each of you by letter addressed you on the 27th of August, 1858.

I now have the pleasure in pursuance of the several instructions since received from you, and in compliance with your wishes as expressed in the different conferences held upon the subject, of submitting to you a Report of the progress made of the survey under my charge, comprising the labor on the ground and the subsequent mapping of certain portions of the field notes, and also to call your attention to such matters as remain to be attended to in order to render the work complete. In the accompanying appendix will be found copies of each and all of the several official communications which have passed between us, including both instructions, reports and estimates, also a copy of the original grants made to the Barons of Baltimore, defining the confines of the lands constituting the old Colony of Maryland and the articles of agreement between the Chancellor of Maryland and Surveyor General of Va; and also a copy of an extract from the records of the Virginia Land Office, defining the position of the locality designated Smith's Point at the mouth of the Potomac River, all arranged in the order of their respective dates.

On the 19th of September, 1858, by invitation of the Commissioners, I visited, in company with several other gentlemen, the head springs of the North Branch of the Potomac to ascertain the position of and identify "Fairfax Stone" planted near said springs by
1363 the Commissioners appointed to fix the limits of the immense tract granted Lord Fairfax between the Rappahannock and Potomac. Upon finding it, I was directed to assume it as the initial point of the Western Meridi-nal line which I was subsequently requested by the Commissioners to trace.

Again, during the latter part of the same month and the first days of October, I accompanied the Commissioners to the Eastern Shore of Maryland and Virginia, to ascertain the existence and nature of any marks along the Boundary Line between Smith's Point, at the mouth of the Potomac, and the Atlantic Ocean, stretching across the Chesapeake Bay and the Peninsula of the Eastern Shore. The result of these examinations was the reception of the joint instructions of the Commissioners dated severally on the 2nd, 4th and 28th of October, 1858, and which I successively proceeded to comply with at such periods of time as circumstances would permit. My attention was first drawn to that section of the Boundary Line between the two States referred to in the Charter from the English

Crown to Cæcilius, Baron of Baltimore, of which the following is an extract.

"All that part of the Peninsula, or Chersonese, lying in the parts of America, between the Ocean on the East and the Bay of Chesapeake on the West, divided from the Residue thereof by a right line drawn from the promontory, or head land, called Watkin's Point, situate upon the Bay aforesaid near the River of Wighco on the West, unto the main Ocean on the East."

The Watkin's Point here referred to was designated by the Commissioner's Philip Calvert, Chancellor of the Colony of Maryland,
and Edmund Scarborough, Surveyor General of the Colony of
1364 Virginia, in certain articles of agreement drawn up and signed by them June 25th 1668, after discharging their duties, as "the point of land made by the North side of Pocomoke Bay, and the South side of Annamessex Bay,"

At the same time the Divisional Line between the two Colonies was described to be "an east line, run with the extremest part of the Westermost angle of said Watkin's Point over Pocomoke River and thence over Swansecutes Creek, unto the marsh of the sea side, with apparent marks and boundaries."

Your instructions of the 2nd of October, 1858, desired me to "proceed at once to obtain by actual survey, as accurately as possible, a plat of the old Scarborough Line, traced somewhere about the year, 1668, from near the mouth of the Pocomoke to the Sounds near the Sea, and also a continuation of this line westwardly along and near the North shore of Pocomoke Bay to Tangier Sound."

In accordance with these instructions I proceeded to Horntown, Accomac County, Virginia, South of and within a few miles of the line now recognized as the boundary by those residing along and near it, and on the 29th of November commenced the duties assigned me.

My party consisted of one Assistant Surveyor, Mr. John de la Camp, and five men employed as chainmen, rodmen and instrument bearers. At first considerable delay was experienced in consequence of the frequent rains, which prevented the party from taking the field, but subsequently the weather proved very favorable and propitious for the survey. The instruments used during the execution of this portion of the work consisted of a very excellent Brunner
Theodolite for obtaining all horizontal angles, and a steel
1365 chain of fifty feet in length for measuring distances. To test the accuracy of these measurements, angles were frequently taken from the several successive stations to some one prominent point, visible from each, or, where this could not be done, the same common points would be connected by different surveys along the several roads between them, each being a verification of the other.

It was impossible to triangulate across the Peninsula, owing to the extremely level nature of the Country and being heavily timbered with pine, the expense of cutting the numerous lines of sight, and of building stands for the instruments, to say nothing of the great loss of time, was not warranted by the nature of the work. It is well known to the Honorable Commissioner from Maryland,

that on previous examinations made by himself when on duty connected with the United States Coast Survey, that a not very favorable report was made by him as to the practicability of connecting the triangulation on the Atlantic Coast with that down the Chesapeake Bay, across or in the neighborhood of this very belt of country.

The survey was also checked by connecting it, both on the Atlantic Coast and on the shores of the Pocomoke Bay, Tangier Sound and Chesapeake Bay, with many stations of the United States Coast Survey Triangulation; this connection is particularly advantageous in enabling the results of the recent survey to be laid down accurately upon *and* General Maps of the two States, should it be desirable to do so at any future time.

With a small Schmalcalder Compass, numerous reconnaissances of roads and lanes and tracts were made adjacent to the main work; for the sake of general information these were laid down in connection with the more accurate survey along the line. In order
1366 to write the present line with some permanent fixed place, as a point of reference, the survey was commenced in the principal street of Horntown; it was also connected with other well known localities as New Church, Wagram, Pitt's Wharf and Shelltown. An accurate plot of Horntown as it appeared on the 29th of November, 1858, is one of the results of our labors. From this initial point, the line of survey was carried along the State road leading to Snowhill, as far as its intersection with what the citizens of the two States, residing in the neighborhood, now recognize as the Boundary Line, thence it continued towards the East, along or near this line to the shore line of the Marsh near Chincoteague Bay. Afterwards it was resumed at the point of intersection with the State road, and a line run westwardly and continuously along and near the designated Boundary to the Pocomoke River. Having ascertained from these surveys the general direction of the marked line between Chincoteague Bay and the Pocomoke River, this course was preserved in the survey made beyond this river as far as the shore line of Jane's Island bordering on Tangier Sound, only deviating from it when compelled by the nature of the country. In explanation of the manner in which the work was executed, I must say that no one direction or course was assumed and run, but that the survey was made along the roads and lanes most convenient to and on either side of the reputed Boundary, and at no great distance from it, sometimes however, when necessary and expedient, it ran across fields and through woods. This was done to expedite matters as much as possible, as it frequently did away with the necessity and the consequent labor and loss of time, of cutting long lines of sight through pine woods, when existing roads not only wind around or through them, but necessarily lead through the more set-
1367 tled portions of the country. From the main line offsets were made to, or, as more frequently happened, the survey passed immediately by such points of local interest as were acknowledged by parties in both States as old Boundary Marks. Some of these consisted of old blazed trees, such as oak, Hickory, Gum,

Cherry, Persimmon, Mulberry and Sycamore; near every point of intersection of the Boundary Line with the roads leading from Virginia into Maryland, the neighbors point out some immense oak, with its huge, wide spread branches, venerable with age, which has become celebrated the country round as "the marriage tree;" under the shade of these trees, the most noted of all the boundary marks, and just across the line, youthful couples go to be united in holy wedlock; fleeing from the wrath of parents, or from the stringency of marital laws, or perhaps from the more pleasure and excitement, they run away from home to commit an act, of which many live to repent when too late. Other marks of the line are to be found either in country roads or lanes, or in divisional fences of neighboring farms, or in gates or sometimes in houses, known and admitted to be such by all persons, irrespective of State, the localities being handed down from one generation to another, and their history being recorded in the memories of the oldest inhabitants. Nor was there any trouble in ascertaining their position. Either interest as to the correctness of the line, or curiosity to examine the instruments or to see what was being done, or, as frequently happened the mere want of something else to do; or sometimes promptings of pure kindness of heart, disposed many persons to offer every assistance in their power, and induced them to accompany the party for miles on their way, to impart such information as was desirable and the obtainance of which might otherwise have occupied
1368 a great deal of time not easily spared.

Along the whole length of the line between Chincoteague Bay and the Pocomoke River, a distance of between twelve and thirteen miles, there were existing such marks, at the time of the survey, thirty trees, one gate, the site of the ruins of an old house, standing at the time the Scarborough Line was run; two State roads located on the line, measuring nearly ten thousand eight hundred feet; making in all an average of one mark for every half mile. At the end of each day a rough field plat was made of the work done, and on reaching the Pocomoke these marks, when laid down on the Map, were found to be nearly on the same straight line; the general direction of this furnished the course as has been previously stated, of the survey west of that river. The instrumental Stations of the Boundary Survey near the Atlantic terminus were connected with one of the secondary Trigonometrical Points of the United States Coast Survey at Snead's House; and also with several minor localities, such as signals, houses, barns, fences, roads and shore lines, as laid down by their plane table parties; thus making a great many points in common between the two works. In the prolongation of the line westwardly along and near the north shore of Pocomoke Bay to Tangier Sound, several of the Coast Survey Signals, those of the secondary triangulation connected with the primary one on the Chesapeake Bay, came successively in range of our instruments at different points; they are called Marumsco, Watkin's Point, Jane's Island and Horse Hammock or Smith's Islands. As on the Atlantic Coast a great many other points were made common to both surveys. Along the line of the entire survey, as desired in your in-

structions, "the names of the proprietors, on each side of the
1369 line," were accurately ascertained, "with the limits of their tract adjoining it;" at the same time the parts of the line that are now acknowledged, and adopted as such, and those parts, "that may be still in doubt," were noted. In addition to the above the locations of all dwellings and improvements adjacent, together with their exact horizontal dimensions and relative positions are established; and also the limits of Marsh and firm ground, including the character of the latter, whether cultivated or wooded. A survey of the Pocomoke river from the point where the line touches it down to its mouth was also made. Your additional instructions of October 20th, 1858, called upon me to extend my survey "to that portion of Islands in Chesapeake Bay, through which the Maryland and Virginia Boundary is supposed to pass, between Watkin's Point and Smith's Point at the mouth of the Potomac." Although two different efforts to reach Smith's Islands proved unsuccessful in consequence of the high winds on the Chesapeake, and the extreme cold weather at the time greatly interfering with all field work, still from the few angles taken on Jane's Island to different points on the former, with the assistance of the Coast Survey sheets and such information as was gained from the neighboring inhabitants, I am able to furnish the information desired by you in your instructions. The field work of the Eastern Shore section of the survey, having been completed, my party returned to Washington on the first of December, 1858. The office duties in connection with the mapping of the field notes commenced at once and were continued without interruption until the first of the following June, 1859. Preparations were then made to take the field again in order to trace and mark the Western Meridian Line through Fairfax Stone.

During this term of office work seventeen sheets of Maps were
1370 constructed. Fifteen of these on a scale of 1/5000 represent the topographical features of the country surveyed, drawn in very minute detail; setting forth all the facts and information gained during the field operations, as explained in the previous pages of this report. The figures in red ink denote the numbers of the stations occupied by the instrument in the survey. They are useful in exhibiting the relative position of the present line to the different landed estates along it, showing also their limits, their character and the names of the proprietors; they will also serve as guides in the retracing and remarking of the line, should it be deemed advisable to do it, and stand as lasting monuments of the exact locality of the line as it is now known. Two of these drawings, on a smaller scale of 1/32000 are General Maps of the whole line compiled from the detailed sheets and also in part from the United States Coast Survey Charts; these latter were kindly placed at my disposal by the officers in charge of the office directing those surveys. By inspection of these Maps the whole subject of the Eastern Shore Section of the Survey becomes elucidated. It will be seen by an examination of the first sheet, that the full straight line drawn in red ink between the Chincoteague Bay and the Pocomoke River, starting from the River and running "thence over Swanse-

cute Creek unto the Marsh of the seaside," passes through or very nearly so, all the boundary marks as laid down from the plat of the field notes, and represented on the Maps by asterisks; two only the marks are at any distance from this straight line, and these not more than three hundred and fifty feet. This shows that the line originally traced and marked by Scarborough and Calvert was very well executed, considering the accuracy of the instruments
1371 used in those days. The Azimuth, or direction of this line, was 5° 15′ North of East at the time of the recent survey in November, 1858. From a long series of magnetic observations made by the United States Coast Survey the annual change of the variation of the magnetic needle has been nicely determined; computing the amount of this change which has taken place during the last one hundred and ninety years, and combining it with the actual variation as obtained at Snead's house, a coast Survey station, it will be found that at the time Scarborough and Calvert first ran the line in 1668, the variation of the needle must have been nearly of not quite 5° 15′ North of East. This shows that the direction of the line then marked by the Commissioners was due Magnetic East, and that in all probability it was run with a compass without allowing for any variation of the needle. The second sheet of the General Map exhibits the fact that the line between Chincoteague Bay and the Pocomoke River, run "with apparent marks and boundaries" when prolonged across the latter river and along and near the North shore of Pocomoke Bay to Tangier Sound, represented on the second drawing by a broken red line, reaches the Sound at the westermost point of Jane's Island, about five hundred feet south of the Coast Survey signal planted on the same Island. No boundary line marks of any kind were found west of the Pocomoke, and the inhabitants professed to be in ignorance of any. Assuming Watkin's Point to be a Peninsula or neck of land such as North Point, near Baltimore, or Smith's Point at the mouth of the Potomac, and not a mere mathematical point, I think the result of the recent survey clearly proves its position, as defined by the Commissioners Scarborough and Calvert; namely, "the point of land made by the north
1372 side of Pocomoke Bay and the south side of Annamessex Bay," or that neck of land now known as Little Annamessex. The name of Annamessex Bay does not now exist on any of the recent maps; however, there can be but little doubt that the mouth of the Big Annamessex River, so much resembling an Inland Bay, may have once given rise to the name. Although the angle of this point of land, where the line now strikes the Sound, is even at this day the most western one, still many years ago, the land made out into the Sound a much greater distance. Jane's Island is said by Capt. John Nelson, age seventy-two years, to have extended within his recollection to the present position of the Light Ship, now anchored about a mile and a half out from the present shore line. Stumps of trees are said to exist in the marshes and in the water between the main land and Watt's Island, showing that it probably was once one continuous neck of land as far South as that Island. On the second sheet is also found a map of Smith's Islands, the

southern extermities of which have always been acknowledged to be within the jurisdiction of Virginia. With the exception of four or five acres of firm ground, mere sites for rude fishermen's huts, those portions of these Islands, South of what is considered the boundary line from Smith's Point to Watkin's Point across the Chesapeake Bay, consists of salt marshes. Drawing the line from Smith's Point, at the mouth of the Potomac, the locality described in the grant of land from Sir William Berkeley to Samuel Smith, dated the 18th of March, 1650, across Smith's Island at or near the point where said line is said to pass, it will be seen that it intersects the prolongation of the Scarborough line very near the anchorage of the Light Ship and where formerly existed the shore line.

1373 This point of intersection must be very nearly the position of the initial point, "the westermost angle of Watkin's Point," from which the old Scarborough Line was originally run. The coincidence between the relative positions of these lines, and the facts concerning them, is very remarkable. A map of the line across Chesapeake is drawn on a scale of 1/128000, and is found on the second sheet of the General Map. It is also seen on the same map that the land lying South of the prolonged or broken line is principally marsh, the area of the firm land South of it and west of the Pocomoke not exceeding eight square miles. This portion of the country, including the different necks of land known as Pocomoke, Murumsco, and Little Annamessex, is now considered to be in the County of Somerset and State of Maryland, the people paying taxes and placing themselves under the jurisdiction of that State. East of the Pocomoke however, the marked line is really the divisional one between the two States of Maryland and Virginia, separating Worcester County in the one State from Accomac County in the other, it is recognized by those living in peaceful possession of property, on both sides of it. This portion, in several instances, forms the limits of the lands between proprietors claiming possession by original patents derived from one or the other of the respective States; these patents calling *calling* for the boundary line as the divisional line between adjoining tracts. As near as could be ascertained by inquiry, the following list of land holders possess such patents, viz:—

From Maryland.	*From Virginia.*
Mrs. Elizabeth Mason.	William Romley.
Mr. Era Boston.	Mrs. Elizabeth Taylor.
Henry Pope.	Capt. James Chapman.
" "	Mrs. Louisa Jane Dennis.
1374 Major Guy Holland.	Mrs. Louisa Jane Dennis.
" " "	Elizabeth Seymour.
Mr. James Payne.	Mr. William Aydelott.
Mr. Alfred Pitcher (lane between).	Mr. John Brittingham.

The lands of James Aydelott, Thomas Marshall, John Whetton, Solomon Marshall and Samuel T. Ball, call for one common trunk of a tree, a line mark situated in the marsh between the farms of

James Aydelott and Samuel T. Ball. This list may be erroneous and incomplete in some respects, as I had no access to the plats of the surveys of the two counties. The following is a list of land proprietors along the marked line between Chincoteague Bay and the Pocomoke River and its prolongation to Tangier Sound. The heavy line indicates, when the Boundary Line is the divisional line between adjacent farms; when a name crosses it, the proprietor owns land in both States.

Commencing on the East.

Maryland Side.	Virginia Side.
Mrs. Elizabeth Mason.	William Rowley.
	Mrs. Tabitha Tull.
Mr. Broughton.	Henry Clay Lindsay.
Esa Boston (in Newtown).	Mrs. Elizabeth Taylor.
Henry Pope.	Capt. James Chapman.
Major Guy Holland.	Mrs. Louisa Dennis.
Mrs. Elizabeth Taylor.	Mrs. Elizabeth Seymour.

Crossing Swansecute Creek.

Alfred Selby.

1375 Maryland Side.	Virginia Side.
Dr. Pitt.	
Gideon Tull.	John Silverthorn.
	William Aydelott.
James Payne.	
	James Aydelott.
	Thomas Marshall.
Samuel Ball.	John Whetton.
John Mills.	Solomon Marshall.
	Mrs. Harriet Tull.
Samuel Davis.	(Tull's Mile.)
	Thomas Hargis. (Melville's farm.)
Alfred Pitcher.	John Brittingham.
Dennis Mill Pond at Wagram.	Thomas Slocum.
	Irvin Merrill.
	Mrs. L. J. Dennis' Saw and grist mill.
	Mrs. Louisa Jane Dennis.
	Benjamin Tull.
	Mrs. Elizabeth Merrill.

After crossing Pocomoke River, the following is a list of the proprietors along and in the neighborhood of the line.

Mrs. Sarah Ann Broughton.
James Milbourne.
S. S. Boggs.
Isaac T. Marshall.
James S. Revell.
1376 William Adams.
Daniel Boston.
Mrs. Susan Bell.
Stephen Coulbourn.
Capt. James Adams.
Robert Price's heirs.
Richard Davis.

(Crossing Marumsco Creek.)

Samuel Thomas Adams. James Revell.
James Samberson. Henry Corner.

(Crossing East Creek.)

James Bedsworth,
John Morris,
John Ward,
Lorenzo Melbourne,
} Doubtful whether tenants or owners.

Benjamin Lankford.
Henry Whettington.
Charles Bell.
Major Guy Holland. Mrs. Louisa Jane Dennis.
" " " Elizabeth Seymour.
Mr. James Payne. Mr. William Aydelott.
Mr. Alfred Pitcher (lane between). Mr. John Brittingham.

The lands of James Aydelott, Thomas Marshall, John Whetton, Solomon Marshall and Samuel T. Ball, call for one common trunk of a tree, a line mark situated in the marsh between the farms of James Aydelott and Samuel T. Ball. This list may be erroneous and incomplete in some respects, as I had no access to the plats of the surveys of the two counties. The following is a list of land proprietors along the marked line between Chincoteague Bay and the Pocomoke River and its prolongation to Tangier Sound.
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Commencing on the East.

Maryland Side.	Virginia Side.
Mrs. Elizabeth Mason.	William Rowley.
	Mrs. Tabitha Tull.
Mr. Broughton.	Henry Clay Lindsay.
Esa Boston (in Newtown).	Mrs. Elizabeth Taylor.
Henry Pope.	Capt. James Chapman.
Major Guy Holland.	Mrs. Louisa Jane Dennis.
Mrs. Elizabeth Taylor.	Mrs. Elizabeth Seymour.

Crossing Swansecute Creek.

Dr. Pitt.	Alfred Selby.
Gideon Tull.	John Silverthorn.
	William Aydelott.
James Payne.	
	James Aydelott.
Samuel Ball.	Thomas Marshall.
	John Whetton.
John Mills.	Solomon Marshall.
	Mrs. Harriet Tull.
Samuel Davis.	(Tull's Mile.)
	Thomas Hargis. (Melville's Farm.)

1378 Maryland Side.	Continued.	Virginia Side.
Alfred Pitcher.		John Brittingham.
Dennis' Mill Pond at Wagram.		Thomas Slocum.
		Irvin Merrill.
		Mrs. L. J. Dennis' Saw and grist mill.
		Mrs. Louisa Jane Dennis.
		Benjamin Tull.
		Mrs. Elizabeth Merrill.

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Stephen Coulbourn.
Capt. James Adams.
Robert Price's heirs.
Richard Davis.

(Crossing Marumsco Creek.)

Samuel Thomas Adams. James Revell.
James Samberson. Henry Corner.

(Crossing East Creek.)

James Bedsworth, John Morris, John Ward, Lorenzo Melbourne, } Doubtful whether tenants or owners.

1379 Benjamin Lankford.
Henry Whettington.
Charles Bell.
John Bell.
James Horsey.
Edgar Horsey.
Mrs. Hennie Horsey.
Isaac Horsey.
Benjamin Macready.
George B. Handy. Henry Handy.
William Handy.

(Crossing Ape's Hole Creek.)

Lorenzo Daw Lawson.
Mrs. Elizabeth Hickman.
Samuel Danik. Richard Sterling.
Josiah Sterling.
William Moore.
Abraham Somers. William Henderson.
Benjamin Somers. Mrs. Millie Dary.
John Riggings.
Shedrick Sterling.
Albert Horsey.
Mrs. Grace Sterling. Jason Riggings.
Benjamin Somers.
David Sterling.
James Taws. John Somers.

(Somer's Cove.)

Michael Somers.

1380 Continued.

George Evans, Severn Evans, Benjamin Thomas, } Jane's Island.

Riggins & Somers' Store.

DARK PAGE BLEED THRU

By examining the detailed maps Nos. 13, 14 and 15, it will be seen that at the neck, called "Little Annamessex" it is very thickly settled, presenting more the appearance of an extended village, the inhabitants are mostly of a sea faring character; besides the small amount of farming done by them, their chief occupation seems to be on the water, either fishing, oystering or in carrying cargoes of potatoes, oysters and other commodities to the Baltimore markets or other ports on the Bay.

Although only occupied in the field during the month of November, 1858, a good portion of which time was either very wet or extremely cold, still I am able to report that in this time the party surveyed over forty-one miles of roads, and measured one thousand and sixteen angles with the Brunner Theodolite; at the same time locating all the lands and dwellings along the lines of survey.

The following is a list of the different distances along the line from the Atlantic Coast to Smith's Point, at the mouth of the Potomac:

From the Atlantic Coast to West Shore of Chincoteague Bay	7.23	miles.
From West Shore of Chincoteague Bay to East Bank of Pocomoke River	13.20	"
From East Bank of Pocomoke River to Jane's Island Coast	14.98	"
From Jane's Island Coast to Smith's Point (mouth of Potomac)	19.32	"
Total Distance	54.73	"

1381 Before closing the Report relating to the survey on the Eastern Shore of Maryland, and in order that it may not be necessary to refer to the matter again, I now take the pleasure of stating that all the original Maps, both detailed and general, have been constructed and drawn under my direction by my assistant, Mr. John de la Camp, to whom I would respectfully call the attention of the Honorable Commissioners for the very able and beautiful style in which he has performed this duty, as well as the energetic manner in which he has assisted me whilst prosecuting the field labors. Whilst absent during the past summer, engaged in tracing and marking the Western meridian line, the office duties were continued and the duplicates of the detailed sheets were drawn. In the course of a few weeks, I hope to be able to inform you of the completion of both detailed and general Maps, in duplicate; a set of these Maps is intended for each State. As they are not yet entirely completed, I would respectfully submit them at present to the Commissioners for their inspection, requesting however, that they may be returned to this office for final completion at their very earliest convenience.

Your Instructions, Gentlemen, of October 4th 1858, contain the following extract; "at the conclusion of the preliminary examinations you are instructed to make by our letter of October 2nd, you will please proceed to the Fairfax Stone, at the head of the North

Branch of the Potomac, as ascertained and identified by us on the 19th of September last, and prosecute as far as the season will permit, such astronomical observations, as may be requisite to determine the direction of a Meridional Line from this point to the Pennsylvania Line."

As the season was already advanced into winter before my party returned from the survey on the Eastern Shore, and the
1382 Meridional Line being located on top of the Alleghany Mountains, the weather would not permit one to take the field again until the month of June of this year. Previous to doing so, I had the honor to submit to you an estimate for funds to enable me to prosecute the tracing and marking of the line. On the 5th of June my party left Washington for Oakland, Alleghany County, Maryland, the most available point to the [illegible]ne of our labors. At this place my arrangements, such as the purchase of supplies and camp equipage were made preparatory to establishing my first camp.

The instruments used on this work were again furnished me by the Bureau of Topographical Engineers, and consisted of a large portable astronomical transit, a zenith telescope, a sextant and artificial horizon, two theodolites, three surveyor's compasses with chains and pins, two cistern barometers, one sidereal and two mean solar box chronometers, together with other necessary articles appertaining to such survey.

In consequence of the more varied and laborious nature of this duty, my party this season had increased numbers. It consisted of one Principal Surveyor, Mr. John de la Camp; one Computer, Mr. Louis Daser; one Guide, five men as Instrument Bearers, Rod men and Chainmen, one Attendant of Observatory; from five to ten axemen, according to circumstances, and one cook. The transportation of Instruments, provisions and camp equipage, from Oakland to Arnold's farm, the nearest and most accessible spot to the initial point for wagons, and the subsequent packing them on the backs of men for nearly a mile up and down the steep faces of the mountain, was attended with considerable labor and difficulty.

Neither on this the first morning, nor any subsequent occasion, when changing from camp to camp, was the trouble and
1383 anxiety light, in consequence either of the absence of or the impassable condition of the roads of the country or from the constant dread of some accident happening to the delicate parts of the instruments; any false step or neglect might have delayed the work for a long time before they could be repaired or replaced by others.

The party reached the head springs of the North Branch of the Potomac on the 17th of June; to avoid the porterage over the mountains of tents and their appurtenances, very convenient and commodious huts were built for shelter at night and from rain. This camp was a most beautiful one; surrounded by immense forest trees of every variety peculiar to the Alleghanies, forming the densest and most delightful shade; supplied from springs of most deliciously cool water; and furnished with every desirable comfort, some time even delicacies in the way of game, the life was truly very agree-

able; the occasional visits of friends formed pleasant episodes, and made the time pass most delightful. The views from it was but limited, as the massive growth forbid any far penetration of sight.

The initial point of the work, the oft mentioned, oft spoken of "Fairfax Stone" stands on a spot encircled by several small streams flowing from the springs about it; it consists of a rough piece of sand stone, indifferent and friable, planted to the depth of a few feet in the ground, and rising a foot or more above the surface. Shapeless in form, it would scarce attract attention of the passer by; it was found without difficulty and easily recognized by the inscription upon it Ffx, now almost obliterated by the corroding action of water and air.

In order not to disturb the stone, the first observatory was built immediately in the rear of it. The instrument used in ascertaining the direction of the line at the first principal station, the
1384 middle point of "Fairfax Stone," was a large portable astronomical transit by Wundeman, employed in conjunction with a sidereal chronometer; it was placed in position on the Meridian by the method of high and low stars.

An open cut was then made through the timber, varying from twenty to twenty-five feet, so as to give a clear line of sight to the next highest point to the North on top of the ridge of the Backbone of the Alleghanies; when brought into the field of view of the instrument, a signal was placed on the ridge in the direction of the line by means of gunpowder flashes at night, the distance being too great to direct the movements of a flag by day. Thus the position of the second Principal Station was established Any intermediate points on low intervening ridges, visible from the instrument, were then marked without disturbing its position. The low valleys or flats between said points were afterwards run and cut out by prolonging the direction with a small theodolite. To give stability to the transit, whenever used, it was always set up upon stone piers built of the best material at hand, the stone were rudely dressed and sunk some three feet into the earth. Upon removing the instrument from the first Principal Station, a monument of stone was erected to mark the spot where it stood. It was then carried to the second Principal Station and the same work gone through with as at "Fairfax Stone."

By sighting back to the first Monument, the transit was at once placed into position on the Meridian, and observations on high and low stars verified the accuracy of the line. The same process was gone through with at every succeeding transit station. The point on the Backbone of the Mountains is well marked by nature, as it stands on a sharp ridge and within a few feet of its highest
1385 point. The view from this point was most extensive and magnificent; the eye could look for miles in every direction; the valleys of the Cheat, the Black Water, the Potomac and the Youghiogheny Rivers, all could be traced, early in the morning or late at evening, by the white lines of delicate fog rising up from their waters. To the South lay impenetrable forests, whilst to the North, farms and glades were spread before the admiring gaze. A visit to this station not far from the head springs of the Youghiogheny is well worth the trouble of the traveller.

From this, the third principal station was established on Lauer Hill, besides several others on the low ridges between. This last position is not a very high one and much more accessible than the rest. Between these two the line intersects the Horse Shoe Run Road and the North West Turnpike. The fourth principal station was on the top of Snaggy Mountain; before reaching it the line crosses the Baltimore and Ohio Railroad. From the top of this mountain another very extended landscape is presented to the eye; this is truly the most important of all the stations along the line, as from it you can overlook with the transit nearly the entire length of the Meridional line. It is also a well marked position by nature in consequence of its great altitude and the small area of its summit; from the fact of the line immediately passing over its highest point it becomes a prominent land mark. The fifth principal transit station is on Fike's Hill, a spur of Briary mountain; it is but a few miles to the north of the village of Cranesville, the line passing only a short distance to the east of that place. From this station the meridian marks were established by flashes on Evan's Hill and Sickle's Hill, to the north; the latter a mile south of Mason & Dixon's Line, the southern boundary of Pennsylvania. This last dis-
1386 tance, like all the intermediate ones between the principal stations was run with the Brunner Theodolite; it was impossible to see the point of intersection of the Meridian and Pennsylvania in Line, from the last transit station owing to its low position. Mason & Dixon's Line is here marked by stakes surrounded by heaps of loose stone, one mile apart from each other; by tracing the line between these piles, its junction with the Meridian was determined. The terminating point is alongside of the turnpike leading from Cranberry Summit on the Baltimore & Ohio Railroad to Smythfield in Pennsylvania, and within a few feet of where the road crosses the boundary of the last State, its position is therefore easily found. A monument of cut stone designates the spot; each of the principal stations, and also the intersection of the line with the North West Turnpike and the Railroad are marked in the same way.

The total length of the Western Meridian is about 37 miles; with the exception of a few miles along this entire distance a broad open cut from twenty to forty feet through a heavily timbered country has been made; which will serve to mark it for many years to come. The gap varies in width according to the size of the timber and depend much upon the overhanging branches; the trees were felled outward from the line and a sufficiently broad opening made to prevent the limbs from interfering with an open vista throughout its length.

Within 4132 feet north of Fairfax Stone the line crosses the North Branch of the Potomac, the stream making a head to the west and north from the spring, before assuming its general course towards the east. It is but a narrow sheet of water there, running through laurel swamps. This point was marked by planting a heavy stake. The Meridian starting from one of the highest points of the Al-
1387 leghanies, has been traced north to the Pennsylvania Line over the top of some of the roughest and most inaccessible portions of those mountains; it passes over ridges and glades, and

the narrow pent up valleys of several mountain streams flowing both to the east and to the west, and occasionally through some open fields. There were very few clearings along it; in the first place the country does not become very thickly settled until north of the Railroad, and in the second place many portions of lands along it are so indifferently poor, that, as long as so much better is to be found, but little inducement is offered to settle there. Again, so much doubt existed among the inhabitants as to the true position of the line that many were deterred from making any improvements along it.

The Meridian as traced by me last summer, differs from all previous lines run, some varying too far to the east, others too far to the west. The oldest one, and that generally adopted by the inhabitants as the boundary line, passes to the east, and from measurements made to it, I found that it was not very correctly run.

The surveyor's compass was used for the purpose, and some incorrect variation of the needle allowed. Owing to the thick and heavy growth of timber it is utterly impossible to run a straight line correctly through it without first opening a line of sight; it could only be approximately done. When north of the Railroad, and nearer the Pennsylvania Line is approached, the settlements and farms become more numerous, and if the meridian line is adopted as the boundary it will cause great litigation, as the patents of most of the lands call for the boundary as their limits. On the Pennsylvania Boundary the new line is about three quarters of a mile west of the old, on the Railroad — feet; at Weillsfield 85 feet; on the North West Turnpike about 40 feet, and on the Backbone
1388 about 20 feet. The Meridian was traced by me with the assistance of Mr. L. Daser. At all the principal stations astronomical observations on North and South stars were made with a Gamley Sextant and artificial horizon for Latitude; and also a series of barometrical readings were taken with Green's Cistern barometers at many points; these last were often interrupted however, and no connected or continuous set obtained owing to the necessity of myself and Assistant absenting ourselves from camp, either to establish distant signals or to superintend the cutting out of the line. The necessary computations for getting the heights of the different mountain points have not yet been made, but a profile of the line will be furnished in connection with the maps of the Western Meridian, whenever authority is granted to make them. The latitudes have already been completed. Observations with the transit upon the moon and moon culminating stars to obtain the longitude of the line during parts of three successive lunations were also made, but the results have not yet been computed. At the same time that I was engaged in tracing and marking the Meridian, other field operations were being conducted by my Principal Assistant Surveyor, Mr. de la Camp. I had placed him in charge of a party to survey all the roads, streams, trails and lands in the neighborhood of the line and also to sketch in all the general topographical features of the country. In running his line of surveys, he at the same time measured with the vertical circle of the theodolite the angles of elevation and depression of the different courses, so that a true rep-

resentation of the character of these mountainous regions can be given on the maps. This system of levelling, combined with the line of levels run along the track of the Baltimore & Ohio Railroad, and the barometrical measurements made at the Principal Stations
1389 will furnish a great deal of useful information, supplying the elevations above the level of the sea of many interesting local points along and in the neighborhood of the line. These surveys were conducted as far as the Monument erected on the Railroad, although still some incomplete work remains to be attended to south of it. The belt country beneath the Railroad and the Pennsylvania Line has also still to be surveyed along the line. The lateness of the season would not have permitted the completion of this work even if the necessary funds had been available at the time. The distances along the line were also measured between Fairfax Stone and Stahl's Hill, and stake, between ten and twelve feet high, above the ground and some four inches in diameter, were also planted as marks in addition to the stone Monuments at the Principal Stations. These Monuments varied from four to six feet above the ground, about two feet square on the base, and capped with a small pyramidical cut stone.

1390 The following is a list of Monuments, Stakes, their localities, and the distance between them, as far as measured or obtained from their differences of Latitude.

Stations.	Distance in feet.	Latitudes.
Fairfax Stone, Monument		39° 11′ 33″ obs.
Stake at Crossing of North Branch	4132	
" on Arnold's Hill	6816	
" at Crossing of Laurel Run	9302	
Monument on Backbone	15243	39° 14′ 04″ comp.
Stake at Crossing of first branch of Youghiogheny River.	19704	
" on Freeland's Hill at Crossing of main branch of Youghiogheny River	25273	
" on John Roth's hill	26672	
" at intersection of Horse Shoe Road	29961	
" on Hentze Hill	34082	
" at intersection of Weill's road	37956	
" at intersection of Reinhard's road	41617	
Monument at intersection of Turnpike	45857	39° 19′ 06″ comp.
1391 Stake at intersection of road to Oakland	49544	
" on Stahl's Hill	52591	
Monument on Lauer Hill	62833	39° 21′ 54″ obs.
" " Snaggy "	106544	39° 29′ 06″ "
" " Fike's "	138922	39° 34′ 26″ "
Mason & Dixon's Parallel	192751	39° 43′ 18″ "

Distance from Fairfax Stone to Mason & Dixon's Line is 36.5 Statute miles.

1392 On the 27th of September last, I had the honor to report to the Commissioners, that the last monument was planted at the intersection of the Western Meridian Line and Mason and Dixon's Line on the 23rd of the same month. The time occupied in tracing and marking the Meridian Line was longer than at first calculated upon, the unpropitious weather at the commencement of the work during the latter part of June and near the close of our labors from the 15th to the 22nd of September, often prevented all

field work. Heavy rains at those times interfered very much with the progress of the surveys. The dense growth of timber along the line, the excessively rugged nature of the country, much more so than at first anticipated, the few cleared fields encountered in consequence of the doubt as to the exact locality of the line, the difficulty of transportation and many other reasons, all caused a great deal of delay, and rendered the expenses of the work much greater, than at first estimated for. I beg leave to inform the Commissioners of the very able assistance rendered me by my Assistants in conducting the field labors in connection with the marking and tracing of the Western Meridian. I would also take this opportunity of officially informing them of the many acts of kindness shown myself and party by all whom we were so fortunate to meet, whilst prosecuting the duties to which, by your request, I have been assigned, and take this method to return our many thanks to them.

Upon returning to Washington my party were all discharged, retaining only Mr. de la Camp as Draughtsman, to complete the unfinished maps of the Eastern Shore section. It will probably take to the end of next January to finish them in toto.

On the 4th of October, 1859, I submitted an estimate for office work to the Commissioners in connection with the plotting 1393 of the notes of the surveys during the summer. In reply I was directed by them to suspend for the present any work upon the maps of the Western Meridian Line. In conclusion I would respectfully offer for your consideration an estimate for completing the field work on the Western Line, planting additional monuments, and to make the Maps of said line; also to trace and mark the Eastern Shore section.

To complete Western Section drawings	$3000.00
" " field work on Western Section, including marking of Boundary	1900.00
" " Eastern Shore Section	800.00
Contingencies	300.00
	$6000.00

The sum total, six thousand dollars, has to be divided between the two States, requiring from each the sum of three thousand dollars. The probable time it will take to complete the field work and drawings is eight months, and I would request that I may be enabled to commence operations at the very earliest convenient date. The above estimate is made supposing the Meridian Line is the boundary line, or approximately for any other line of a proportional length, that may be adopted by the two States, as the nature of the country would in either case be similar.

I am, Gentlemen, very respectfully,
Your ob'd't servant,

N. MICHLER,
Lt. Topo. Engineers, U. S. A., in Charge of Survey.

1394 APPENDIX.

Appendix to Lt. Michler's Report on the Maryland and Virginia Boundary Survey.

Special Order,
No. 115.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *August 20th,* 1858.

2. In addition to the duty upon which he is already engaged, First Lieutenant N. Michler, Corps of Topographical Engineers, is placed in charge of the parties to be employed by the States of Maryland and Virginia, to run and mark the boundary line between the two States; and will by correspondence or otherwise, obtain from the Boundary Commissioners, appointed by the Governors of those States, at whose request he has been detailed for this special service, any information he may need respecting the same.

The instruments required by Lieutenant Michler, will be furnished by the Colonel of the Corps of Topographical Engineers.

By order of the Secretary of War.

E. D. TOWNSHEND,
Ass't Ad't General.

Lieut. Michler, Thro. Sec. of the Navy.

ELLANGOWAN POST OFFICE, *August 28th,* 1858.

DEAR SIR: I have but just received your letter. It was marked missent, to some other part of the State. I have written to Angus W. McDonald, Esquire, Commissioner from Virginia, to request
1395 him to meet me at Washington on Tuesday, August 31st and informed him that I would request you to meet us also. If there is anything to prevent, let me know.

Yours, very truly & respectfully,

THOS. J. LEE.

Lieut. Michler, U. S. Topo. Engrs.

WASHINGTON, D. C., *August 27th,* 1858.

Thos. J. Lee, Esqr., Commissioner for Maryland.

DEAR SIR: Your letter of yesterday has just been received. There is nothing to prevent my meeting the Commissioner for Virginia and yourself at this place on Tuesday, August 31st, the time you have requested the former to be here. I have the honor to enclose to you a copy of Special Order No. 115 from the War Department, assigning me to duty, and will also forward a copy to A. W. McDonald, Esquire, Commissioner for Virginia.

I am, Sir, very respectfully,
Your Ob't servant,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A.

1396 WASHINGTON, D. C., *August 27th*, 1858.

A. W. McDonald, Esquire, Commissioner for Virginia.

DEAR SIR: I have the honor to send you a copy of Special Order No. 115 from the War Department, assigning me to the special service of assisting the Commissioners for Virginia and Maryland in tracing and marking the boundary line between the two States. This morning I received a letter from Thos. J. Lee, Esquire, Commissioner for Maryland, informing me that he had requested you to meet him at this place on Tuesday, August 31st, and asking me also to have an interview with you both. There is nothing to prevent my being present at that meeting, and I shall be very glad of an opportunity of consulting with you both. I feel very much complimented in being detailed for the duty and trust that I shall be able to perform the service to the entire satisfaction of the Commissioners.

I am, sir, very respectfully,
Your obt. servant,

N. MICHLER,
Lieut. Corps of Topo. Eng'rs, U. S. A.

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORN TOWN, ACCOMAC CO., VIRGINIA, *October 2nd*, 1858.

Lieut. N. Michler, U. S. Topo. Eng'rs.

SIR: The Commissioners desire that you proceed at once
1397 to obtain by actual survey as accurately as possible, a plat of the old Scarborough line traced somewhere about the year 1668, from near the mouth of the Pocomoke to the sounds near the sea, and also a continuation of this line westwardly along and near the north shore of Pocomoke Bay to Tangier Sound. It is supposed that there is still standing some old marks of the Scarborough line, but that nevertheless where these marks do not exist, a close approximation can be had from the limits of the lands of those persons owning adjacent to it. You will please therefore ascertain as you progress and mark on your plat, as nearly as you can, the names of the proprietors on each side of the line, with the limits of their tract adjoining it, noting the parts of the line that are now acknowledged and adopted as such, and those parts that may be still in doubt. It is inferred from documents in possession of the Commissioners that the Commission of 1668 did not mark the line west of the Pocomoke and that in all probability you will find no marks to guide you. You must therefore be governed in the direction of your line westwardly from the Pocomoke to Tangier Sound, by the mean or average direction of the whole line on the East side of the River (the line dividing Worcester from Accomac). It is equally desirable to note along this portion of your work the names of the proprietors and limits on said line of the lands of each, with the

location of all dwellings and improvements adjacent, and also the limits of marsh and firm ground upon the southern of your line especially. As this preliminary step of the Commissioners is merely to obtain the best local information, you will, to avoid misapprehension on the part of those interested, please explain to them the object of your survey. The originals of your notes and plat you will for the present retain in your possession, subject to the future
orders of the Commissioners, and transmit to each of them
1398 a certified copy of the plat with such explanations as you
may deem essential. To carry out these instructions, you will be allowed to employ one assistant (a surveyor and draughtsman) at a compensation of four dollars per day for the time he may be employed & such number of laborers as you may deem necessary having strict regard to economy in your expenditures.

You will please submit an estimate of what amount of funds you will require for the present.

We are Sir, very respectfully,

A. W. McDONALD,
Com'r for Virginia.
THOS. J. LEE,
Com'r for Maryland.

Commission for Tracing the Boundary Lines Between Maryland and Virginia.

HORNTOWN, ACCOMAC CO., VIRGINIA, *October 4th*, 1858.

Lieut. N. Michler, U. S. Topo. Eng'rs.

SIR: At the conclusion of the preliminary examination you are instructed to make by our letter of Oct. 2nd, you will please proceed to the Fairfax Stone at the head of the North Branch of the Potomac as ascertained and identified by us on the 19th of September last, and prosecute as far as the season will permit such astronomical observations as may be requisite to determine the direction of a meridi-nal line from this point to the Pennsylvania line. As it is
not probable that the whole of this line could be traced this
1399 fall, you will for the present confine yourself to the astro-
nomical part merely and to establishing as many distant points along the line as you may deem essential as checks to the surveyors in tracing and marking the same. For which purpose you are authorized to retain the services of your assistant at the same compensation and employ such laborers as you may require. You will please also inform us of the probable amount of funds you may require for this service.

We are, Sir, very respectfully,

A. W. McDONALD,
Com'r for Virginia.
THOS. J. LEE,
Com'r for Maryland.

EASTON, PENNA., *October 14th*, 1858.

GENTLEMEN: I have delayed until this time acknowledging the receipt of the joint instructions of the Commissioners, appointed on the part of their respective states, "to trace and mark the Boundary lines between the States of Maryland and Virginia," dated at Horntown Va. on the 3rd inst., but now have the honor to do so. This delay has been in consequence of the sudden and painful bereavement which was so unexpectedly announced to me upon my arrival at Baltimore after visiting in your company that portion of the Boundary line between the Atlantic Ocean and Chesapeake Bay. Instead of proceeding to Washington to make arrangements for executing your instructions, as was my intention when leaving you, the bad news hastened my immediate return home. In obedience to your request as contained in the instructions above referred
1400 to, I would submit for your consideration the following estimate to meet the necessary expenses of conducting the survey, which you have placed under my directions. The probable length of time for completing the field work, will be three months, considering the wooded and rugged nature of a great part of the country through which one of the lines runs. The drawing of the necessary Maps, in triplicate, a copy for each State and one for the Topographical Bureau, will take from six to seven months. For the present I will however estimate for a party in the field for two months, by the end of that period of time the preliminary survey of the Eastern Shore will have been finished & the season too far advanced into winter to remain longer at work on the Western line.

Pay for one assistant (Surveyor & Draughtsman) at $110 per month, for two months	$220.00
Pay for one assistant (Computer &c.) at $100 per month for one month	100.00
Pay for six laborers (Chainmen, Instrument Bearers, Axemen &c.,) at $1 per day each for sixty days	360.00
For Transportation of Assistants, Laborers, and Instruments, and for Provisions, Camp Equipage and Incidental Expenses, for sixty days at fifteen dollars per day	900.00
For Reimbursement of Personal Expenses, transportation of self and baggage	170.00
	$1750.00

This is but a rough estimate for field work for a portion of the time; for office duties the sum required will be considerably less, as the Assistant alone will be retained & no expense will arise
1401 from transportation, provisions &c. Although your instructions call for but one assistant, still I have taken the liberty to estimate for two, the additional one to be employed on the Western line. I think the work will progress more rapidly along that portion with his assistance. I trust this suggestion will meet with the approval of the Commissioners. I shall be in Washington on Monday the 18th & should the Commissioners find it convenient to

provide me with funds in time, I hope to be able to leave there on the following Wednesday for the Eastern Shore. I would request my communications to be addressed to the care of Colonel Abert, Bureau of Topographical Engineers, Washington, D. C.

I am, Gentlemen, very respectfully,
Your obt. servant,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A.

To A. W. McDonald, Esq., Comm'r on the part of Virginia.
Thos. J. Lee, Com. on the part of Maryland.

ELLANGOWAN P. O., BALTO. CO., MD., *October* 16, 1858.

SIR: Your estimate of funds required by you to comply with the instructions of the Commissioners of the 2nd and 4th inst. has been received. One half of this sum, which is to be defrayed by the State of Maryland, viz: eight hundred and seventy-five dollars will be placed at your disposal as soon as I receive information that the estimate is approved by the Commissioner for Virginia.

1402 I am Sir, very respectfully,

THOMAS J. LEE,
Com'r for Maryland.

Lt. N. Michler, U. S. Topo. Eng'rs, Washington.

WINCHESTER, *October* 21, 1858.

Lieut. Michler.

DEAR SIR: I received last night yours of the 19th inst., covering the copies of the joint instructions; upon receipt of your former letter of 14th inst., I wrote at once to Gov'r Wise, asking him to send you without delay a draft for Virginia's share of the estimate. I hope you may have received it before this; if you have, or as soon as you do, please let me know, as I wish to appoint and hold another interview with Col. Lee, & we may then join you upon the Peninsula, as I incline to think we had better continue the work there until it is completed, than do at so late a period to commence that in the mountain, which cannot be completed this winter.

If you see Mr. Lee please show him this.

Yours, respectfully,

A. W. McDONALD.

BALTIMORE, *October 28th,* 1858.

Lieut. N. Michler, U. S. Topo. Eng'rs.

1403 SIR: In additio*nal* to the instructions contained in our joint letter of Oct. 2nd you will please extend your survey to that portion of Islands in Chesapeake Bay through which the Maryland and Virginia Boundary is supposed to pass between Watkin's Point and Smith's Point, so as to give the Commissioners as nearly as you can the names of the landholders upon each side with the extent of the lands of each along the line. And as it

appears that the U. S. Coast Survey topography does not at present include what is now called the mouth of the Pocomoke River, you will please also include that in your surveys. By joining these detached surveys with the nearest Coast Survey Trignometrical point, we will be enabled with the aid of that Triangulation to locate them accurately upon a general Map, if necessary.

ANGUS W. McDONALD,
Com'r on the part of Virginia.
THOMAS J. LEE,
Com'r on the part of Maryland.

Mr. Michler will please send each of us accurate *coppies* of the above by mail.

A. W. McDONALD.

HORNTOWN, ACCOMAC CO., VA., *November 3rd,* 1858.

GENTLEMEN: I have the honor to acknowledge the receipt of your additional Instructions, dated October 28th 1858, at Baltimore, a copy of them for each of you will separately accompany this communication, which will be sent to each individually. I
1404 reached this place on the 28th ult. Thursday, during the afternoon. On Friday morning, the survey was commenced, but I was soon compelled to suspend operations. At 10 A. M. of that day, a violent rain drove the party in and continued unceasingly until Sunday morning. On Monday we worked all day, the weather being clear and warm.

Yesterday morning, Tuesday, a North East storm set in and up to the time I write there has been no cessation of rain. From present appearance there is not much prospect of its clearing up. A commencement of the survey has at least been made, and from what I learn I am convinced that there will not be much difficulty in progressing rapidly as soon as the weather permits. My party consists of one Assistant, Mr. John de la Camp, and five men as Chainmen, rodmen and Instrument bearers. I will keep you advised at every favorably opportunity of the progress made.

I am, Gentlemen, very respectfully,
Your ob't servant,

N. MICHLER,
Lt. Topo. Eng'rs U. S. A., in Charge of Survey.

Angus W. McDonald, Esq., Comr. for Virginia.
Thos. J. Lee, Esq., Comr. for Maryland.

MARYLAND & VIRGINIA BOUNDARY,
SURVEY OFFICE,
WASHINGTON, D. C., *May 7th,* 1859.

GENTLEMEN: I have the honor to submit to each of you a
1405 set of accounts, for the fourth quarter of 1858, and first quarter of 1859, covering disbursements to the 31st of March, made whilst in the field during the survey of that portion of the Boundary line between the Chesapeake Bay and the Atlantic Ocean,

and afterwards in the office in constructing the Maps of said Survey. The vouchers and accounts have been made out in triplicate, one set for each, State and one to be retained by myself. Having received from each Commissioner the sum of $875.00 on the part of their respective States, the sum total amounting one thousand seven hundred and fifty dollars ($1750.00), based on my last estimate, and the amount of expenditures for the two quarters having been $1049.13/100 there remained, on the 1st of April, a balance on hand of $700.87/100. During the month of April, the disbursements for office work were $535.12/100, leaving a balance on hand due Maryland & Virginia, on the 1st of May, of $165.75/100, sufficient to complete in detail the Maps of the Eastern Shore section of the Line. As the season for again taking the field is fast approaching, I would now respectfully submit for your consideration an estimate for running the Western Boundary, a meridian line from Fairfax Stone at head springs of the Potomac, north to its intersection with Mason & Dixon's Line, the southern Boundary of Pennsylvania. This section is very nearly forty miles in length, crossing several ridges of the Alleghany Mountains; it will probably take two months to accomplish the field work and five months to construct and complete the Maps in every detail.

The pay of Principal Assistant (surveyor and draughtsman) seven months from June 1st to December 31st 1859, two hundred and fourteen days @ $4 per day..	$856.00
For pay of second Assistant (Surveyor & draughtsman) seven months @ $100 per month.....	700.00
1406 For pay of eight laborers (2 chainmen, 2 rodmen, 1 Instrument bearer, 2 axemen & 1 cook) for two months, sixty one days @ $1 each per day.....	488.00
For transportation of Assts. Instrument bearers and instruments from Washington, D. C., to Boundary line and back	100.00
For provisions for sixty one days for ten men @ $5 per day	305.00
For camp equipage for party.....	75.00
For incidental expenses (axes, stationery &c.).....	51.00
Sum total.....	$2575.00

As the expense of running the line is shared by the two States, this sum of two thousand five hundred and seventy five dollars has to be divided between them, requiring each to furnish one thousand two hundred and eighty seven dollars and fifty cents, to meet its portion of the estimate. I hope the above estimate will meet with the favorable consideration of the Commissioners.

I am, Gentlemen, very respectfully,
Your obt. servant,

N. MICHLER.
Lt. Topo. Engr's, U. S. A., in Charge of Survey.

Thos. J. Lee, Esqr., Comr. for Maryland.
Angus W. McDonald, Esqr., Comr. for Virginia.

1407 OAKLAND, ALLEGHANY Co., MD., *August 17th*, 1859.

Thos. J. Lee, Esqr., Com'r for Md.; Angus W. McDonald, Esqr., Com'r for Va.

GENTLEMEN: I have the honor to report to you the progress of the survey under my charge to this date. The Boundary Line between the two States has been traced and marked from Fairfax Stone to a point a mile north of the Baltimore & Ohio Railroad. With the exception of two or three short sections, in all about two miles, an open cut, varying from fifteen to twenty five feet, has been made through heavy timber for that distance. One of my assistants, Mr. de la Camp, is at present engaged in measuring the portions completed, placing some additional marks and monuments, and in taking a general topographical sketch of the line; surveys of the roads and streams in the neighborhood of the line have been extended from the initial point of the work to within a short distance of the Railroad. By the end of August I hope to have traced the line to the top of Snaggy Mountain, said to be six miles north of this road. During the field survey the work in the office at Washington has been also continued & my last report from there states that duplicate copies of the Maps of the Eastern Shore section of the Boundary have all been completed except the lettering of the titles. In having these duplicates made I have been compelled to draw from the amount of my last estimate ($2575—for marking & tracing the Western section) the sum of $569.61. The work on the line has also taken much more time than at first anticipated, so that I find in closing up my accounts to this date, it will require $700—more,

1408 one half from each State to enable me to meet my expenses at the end of this month. I would therefore respectfully request the Commissioners to furnish me this amount, at their earliest convenience, if possible by the close of the month. At that time there will be still left from twleve to fifteen miles of the line to trace and mark and from what I learn no improvement in character upon that portion already completed. I should desire to continue the work & finish the whole before leaving the field, but to do this would be constrained to ask for additional means. My force is reduced to the very lowest possible limit, ten men in all & to be able to keep the field during the month of September, in which time the whole line can be marked & traced, I will require the additional sum of one thousand dollars, one half from each State. It would save considerable expense if I could be allowed to continue the work without interruption. I would respectfully request the Commissioners to answer me before the termination of the month, on this matter; in case *in case* the respective appropriations of the two States are not sufficient I shall from necessity be obliged to discontinue the work for the present. From the very commencement of the work up to the present time, with but slight exceptions, we have had continuous heavy cutting through dense woods & over an extremely rugged country; and although I have endeavored to perform the duty entrusted to me with the strictest economy, still I find it

impossible to complete it in the time specified or for the amount asked for in my last estimate.

Hoping to receive an early reply,

I remain, Gentlemen, very respectfully,

Your ob't servant,

N. MICHLER,

Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

1409 MD. & VA. BOUNDARY,

ELLANGOWAN P. O., BALTIMORE CO., *Aug.* 20, 1859.

Lieut. Michler, U. S. Topo. Eng'rs, &c.

SIR: Yours of the 17th inst. has been received, and a copy forwarded to the Governor of Maryland with the request that the sum of $350, therein named, be placed in my hands at an early day for your use. It will be forwarded to you by mail as soon as received. This leaves but a small balance on hand of the appropriation from my State, not sufficient to finish marking and tracing the Boundary according to your estimate. It is with extreme regret, therefore, that I am constrained to direct that you close your field work at the end of the present month, that the remaining funds may be applied to office work; so as to put the materials on hand in shape to present to the Legislature of Maryland at its next session. You will please leave your field work in such shape as to be easily and economically resumed. Owing to the absence of the Commissioner for Virginia, it is not possible for me to obtain his coöperation in these instructions, but they are not the less imperative, as from the want of funds, I can proceed no further with the field work.

I am Sir, very respectfully,

THOS. J. LEE,

Com'r of Maryland.

1410 MARYLAND & VIRGINIA BOUNDARY SURVEY,

OAKLAND, ALLEGHANY CO., MD., *August 23rd*, 1859.

Thos. J. Lee, Esqr., Com'r for Maryland.

SIR: I have the honor to acknowledge the receipt of your communication of the 20th inst.; and will, in accordance with the directions therein contained, discontinue the field work of the survey of the Boundary Line between the two States at the end of the present month. I will, as soon after as practicable, proceed to Washington to resume the duties in the office. As Mr. McDonald, the Commissioner for Virginia is expected to reach his home on the 27th, I will take the liberty to enclose to him a copy of your letter addressed to me & also one of this reply to yours.

I am Sir, very respectfully,

Your ob't serv't.,

N. MICHLER,

Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

MARYLAND & VIRGINIA BOUNDARY SURVEY,
OAKLAND, ALLEGHANY CO., MD., *August 23rd,* 1859.

Angus W. McDonald, Esqr., Com'r for Virginia.

SIR: I have the honor to enclose to you the reply of Thos. J. Lee, Esqr., Com'r for Maryland to my communication addressed
1411 the Commissioners on the 17th inst., & also my answer of this date. Having been informed by letter from your son of your expected return on the 27th, I will direct this communication to Winchester in hopes it will the sooner reach you.

I am Sir, very respectfully,
Your ob't serv't.,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

MARYLAND & VIRGINIA BOUNDARY SURVEY,
OAKLAND, ALLEGHANY CO., MD., *August 30th,* 1859.

Angus W. McDonald, Esqr.

SIR: On the 17th inst. I had the honor to address to the commissioners on the part of the two States a letter reporting the progress of the survey of the Boundary under my charge; since then the work has been continued to a point on the top of Snaggy Mountain, about six miles north of the Baltimore and Ohio Railroad. In the same communication I requested to be furnished with an additional sum of money, three hundred and fifty dollars from each State, to enable me to meet my expenses to the end of the present month; also an estimate for completing the survey of the entire line during the coming month of September. My original estimate of $2575 for tracing and marking the western section of the line has proved insufficient for several reasons. In the first place at the request of the Commissioner for Maryland, I had drawn in duplicate, a
1412 copy for each State, the Maps of the Eastern Shore section of the Boundary, to do this I had to use out of the funds of my last estimate $569.61, leaving a little over $2000 for the Western section. In the second place, owing to the very frequent rains & at times very prolonged ones, no work could be performed & in consequence much time lost; the country has also proved much more rugged than at first anticipated & but few cultivated fields have up to this time been encountered; the line has therefore had to be cut through dense woods for nearly the entire distance. From these various causes a great deal of delay has been experienced, and the expense of executing the work greater than that estimated for. The Commissioner from Maryland, in replying to my communication, states that he has forwarded a copy of it to the Governor of Maryland, with a request that the sum of $350, therein named, be furnished at an early date for my use, to meet my expenses to the end of this month. He adds that, "this leaves but a small balance on "hand of the appropriation from my (his) State," "not sufficient to finish marking and tracing the Boundary according to (your) (my) estimate." He is however anxious to have the work prosecuted towards completion this fall, if arrangements can be made by you,

sir, to enable me to do so. Having progressed so far on the work, it is very desirable to complete it; the unfinished portion runs through more settled localities & where there is more interest at stake at present than along the first section. It will also be more economical to continue on, than to postpone the work to some other time. As it is only absolutely necessary to trace the line from ridge to ridge, without any col-ateral surveys, I would respectfully request to furnish an estimate to continue the line in this manner, leaving the
1413 subordinate surveys to be carried on at some future time. In addition therefore, to the $350 asked for from each State to meet my expenses to the end of the month, I would desire to have $650 more, one half from each State; this will enable me to keep a party of seven men in the field during the month of September, in which time the meridian line can be easily finished.

I am Sir, very respectfully,
Your ob't serv't,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

OAKLAND, *Augt.* 30*th*, 1859.

Lieut. Michler.

DEAR SIR: In response to your application and estimate for a further supply of funds to complete field work for the fall, I have only to say, that, beyond all question, it will be wise and economical to proceed at once to finish the running of the Meridian, whilst you are in the field with an organized corps; and believing, do not hesitate to furnish a requisition for Virginia's portion of the funds requisite, and cannot permit myself to doubt that Maryland will fail to keep faith by promptly furnishing her portion.

Respectfully yours,

A. W. McDONALD,
Commissioner, &c.

1414 MARYLAND & VIRGINIA BOUNDARY SURVEY,
OAKLAND, ALLEGHANY CO.,
MARYLAND, *September* 1*st*, 1859.

Thos. J. Lee, Esqr., Commissioner for Maryland.

SIR: On the 30th *u*ntimo Mr. McDonald, Commissioner for Virginia, passed through this place, and I had the honor of an interview with him. I laid before him my letter of the 17th ultimo to the Commissioners, asking for an additional sum of money to enable me to meet my expenses to the end of this month & also an estimate for completing the marking and tracing of the line. I also read to him your reply to the same communication. At his request, I addressed him a letter on the 31st ultimo, a copy of which I beg to enclose to you as well as his reply to the same. In accordance with the latter, a requisition has been made by him upon the Governor of Virginia for her share of the necessary amount to enable me to proceed with the work. As it is merely contemplated to mark the line from ridge to ridge until its intersection with Mason & Dixon's the estimate asked for is very much reduced, and I am

soncerely in hopes that you will be able to make such arrangements as to furnish me with Maryland's portion of the funds. The line is now marked to the top of Snaggy Mountain, about six miles North of the Railroad, to which point I commenced moving up my camp today from Oakland. I shall proceed with the means at my disposal hoping soon to receive the amount of my several estimates as I shall be in want of money to meet all my expenses to the end of August.

I am, Sir, very respectfully,
1415 Your obt. servant,

N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

ELLANGOWAN, MARYLAND, *Sept. 6th,* 1859.

Lieut. Michler, U. S. Topo. Eng'rs, in charge of Surveys, Md. & Va. Boundary.

SIR: I beg to acknowledge the receipt of your letter of Sept. 1st. At your request, and to comply with the wishes of the Commissioner for Virginia, I cheerfully acquiesce in the continuance of the field work as far as your modified estimate will permit, and the amount therein asked for of $325—together with the sum of $350 required in your letter of the 2nd August will be forwarded to you as soon as received from the Treasurer of Maryland. As this last requisition exhausts the sum for the present appropriated by the State of Maryland, I must request that you do not exceed this amount.

I am, Sir, very respectfully,

THOS. J. LEE,
Com'r for Maryland.

1416

ELLANGOWAN P. O.,
BALTIMORE CO., MD., *Sept. 7th,* 1859.

Lt. Michler, U. S. Topo. Eng'rs, in charge, Surveys Md. & Va. Boundary.

SIR: Since my letter to you of yesterday's date, I have had the honor & pleasure to receive a communication from the Governor of Maryland, informing me that he would place an additional sum of five hundred dollars to my credit, "in view of the great importance of still continuing in the field at the work and economy in now running the line, and for the reason set forth in the report of Lieut. Michler (August 17th), which amount, or so much thereof as may be needed, he will pay if required, to enable you (me) to proceed at this time, and prevent the delay and further expense of discontinuance and resumption consequent on breaking off at this time——."

The Governor also expresses "his satisfaction at the energy which has been shown in the prosecution of the work, and his hope that it may be completed, or at any rate, so far advanced by the meeting of the General Assembly as to enable it to take final measures in regard to it."

You will please therefore consider my instructions of the 20th August and Sept. 6th modified so far as these additional means will permit, and should it meet the views of the Commissioner for Virginia, continue if possible, the work to completion. I herewith enclose a check for $512.50/100. Please inform me at what time a further sum will be needed.

I am, Sir, very respectfully,

THOS. J. LEE,
Comr. for Maryland.

1417 MARYLAND & VIRGINIA BOUNDARY SURVEY,
OFFICE, WASHINGTON, D. C., *September 27th,* 1859.

Angus W. McDonald, Esq., Commissioner for Virginia; Thos. J. Lee, Esq., Commissioner for Maryland.

GENTLEMEN: I have the honor to report the return on this morning of myself and party to this city, having planted the last monument at the intersection of the Meridian Line & Mason & Dixon's Line on last Friday afternoon, the 23rd instant.

The Meridian Line, commencing at the Fairfax Stone, has been traced and marked throughout its entire length. The surveys of Roads & streams in the neighborhood of the Line were discontinued after reaching the Baltimore & Ohio Railroad; it would have been impossible to complete them in time to furnish the maps of the Line by the meeting of the Legislature of the two States. I hope in the course of a few days to be able to submit my estimate for mapping the field work.

I am, Gentlemen, very respectfully,

Your obt. serv't, N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

1418 MARYLAND & VIRGINIA BOUNDARY SURVEY,
OFFICE, WASHINGTON, *October 4th,* 1859.

Thos. J. Lee, Esqr., Com'r for Maryland; Angus W. McDonald, Com'r for Virginia.

GENTLEMEN: I have the honor to submit for your consideration the following estimate for office work, in connection with the recent surveys made in the field during the tracing and marking of the Meridian Line between Fairfax Stone and the Southern boundary of Pennsylvania. The maps in duplicate of the Eastern Shore section of the work have been completed, save the duplicates of the General Maps, it is the labor of one draughtsman for fifteen months to make them. To complete the maps of the Western section in duplicate will take six months for three draughtsmen, if executed in the same style as those of the Eastern Shore section.

For one principal draughtsman for six months @ $4 per day	$728.00
Two draughtsmen for six months @ $100 per month for each	1200.00
For stationery, &c.	75.00
" messenger for six months	72.00
Incidental expenses	25.00
	$2100.00

One half of said estimate, $1050.00 forms the quota for each State. So far the Commission has not been at any expense for rent of office, or for use of instruments, as both have been, and I presume will continue to be furnished by the Topographical Bureau. One copy of the maps can be had in readiness in about three months. Before commencing office work, I shall wait for authority of the Commissioners to proceed with the maps, and would respect
1419 fully request their early attention to the matter. In case sufficient funds are not now available, I would request that a portion at least of the estimate be placed at my disposal, and the remainder after any additional appropriations may be made for the purpose by the respective Legislatures of the two States. I would also call the attention of the Commissioners to the fact, that although the whole Meridian Line has been traced and marked, still the subordinate surveys of the roads and lands in the neighborhood are still incomplete; should it be the desire to continue them during the coming spring provision should be made to meet the necessary expense.

I am, Gentlemen, very respectfully,
Your ob't serv't, N. MICHLER,
Lt. Topo. Eng'rs, U. S. A., in Charge of Survey.

WINCHESTER, *Nov. 12th,* 1859.

Lieut. Michler.

DEAR SIR: I send you a copy of a letter of this date, written to Col. Lee, as the best reply I can make to yours of the 3rd inst. If Col. Lee concurs in the views I have submitted to his consideration you will perceive the necessity of making an estimate for further funds upon a different basis from the one upon which you predicated those furnished of date of the 4th of October last. The contents of my letter to Col. Lee will excuse me to you, I hope, for the delay which has taken place since I should have answered your last to me.

1420 I am, sir, very respectfully,
Yours, &c., A. W. McDONALD,
Com'r for Virginia.

WINCHESTER, *November 12th,* 1859.

Col. T. J. Lee, Com'r for Maryland.

DEAR SIR: Your note of the 5th inst., reached me on the 7th inst.; since which the anxieties of my friends & relatives in Charlestown

has so much engrossed my attention that I have not found myself till now at leisure to send a proper response. About the 9th October, Lieut. Michler informed me that estimates for mapping the field work on the Western line would be immediately forwarded to each of the Commissioners; on the 7th of October I received yours of the 6th inst., and would have answered it promptly, but waited, expecting from day to day to receive from Mr. Michler the promised estimates. Before I entertained a doubt that I should receive them, the affair at Harper's Ferry expelled everything else from my attention until the — ult. when I wrote Lieut. Michler informing him that his "estimate had not reached me." On the 3rd inst. I received enclosing a copy of the estimates furnished you, and referred to in yours of the 5th October to which I will now reply, believing that the circumstances will excuse me in your judgment, for the delay they have occasioned. When I wrote as above, I stated to Lieut. Michler, informing him, that I had not received the promised estimates. I reminded him that the joint instruc-
1421 tions given him at Horntown required the establishment of the line, from Watkin's Point (as ascertained by his survey of the line from the seashore) to Smith's Point; and that I hoped he would not fail to lay down such line upon the general map. I concur with you so far as to "direct Lieut. Michler to employ for the present but one draughtsman (the principal one if he pleases) upon the duplicate general map of the Eastern Shore section, but cannot agree to add as you suggest" "and such other work on the section as he may deem most advisable," regarding as I do any mapping of the Meridian which he has been engaged in running as entirely supererogatory, unless the States of Maryland and Virginia agree to adopt such Meridian as the boundary line in lieu of the one called for in the Charter to Lord Baltimore. I trust you concur with me that the line from Watkin's Point to Smith's Point should be run and laid down on the duplicate general map and that such general map shall be prepared in time to be presented to the Legislatures of our respective States, at their next session; we shall have no difficulty, I presume, in making a joint report of the work we have had done; although we may differ as to results obtained by the work reported; such difference of views need form no part of the joint report we are required by the law under which we respectively act, to make to the States of Maryland & Virginia. I will forward to Lieut. Michler a copy of this communication, and hope you will send a copy of any reply, with which you may be pleased to favor me, and remain,

Sir, very respectfully,

Yours, &c., A. W. McDONALD,
Com'r for Virginia, &c.

1422 MARYLAND & VIRGINIA BOUNDARY,
ELLANGOWAN P. O.,
BALTIMORE CO., MD., *Nov.* 21, 1859.

Lieut. N. Michler, U. S. Topo. Eng'rs, in Charge of Survey, Maryland & Virginia Boundary.

SIR: I have been in correspondence with the Commissioner for Virginia upon the subject of your estimate, dated Oct. 4th 1859 and we have concluded that in lieu of the sum therein proposed by you to be expended in office work that you employ but one draughtsman upon such work as may be necessary to complete the map of the Eastern Shore section, postponing for the present the platting and office work of the N. W. Boundary Line.

In explanation of our reasons therefor I enclose copies of two letters, from myself to Mr. McDonald dated Oct. 6th & Nov. 15th. Mr. McDonald informs me that he has forwarded you his reply to the first of the above. You will please, therefore, appropriate any balance you may have in hand of the last remittance (of $500) from the State of Maryland towards the above object.

I am, Sir, very respectfully,
Yours,
THOS. J. LEE,
Com'r for Maryland.

ELLANGOWAN P. O., BALTO. CO., MARYLAND,
October 6th, 1859.

Angus W. McDonald, Esq., Com'r for Virginia, Winchester, Va.

1423 SIR: I have received today from Lieut. Michler for our consideration, an estimate of funds required by him for office work, in connection with his recent survey, the duplicate of which I take it for granted you have received by this time. In view of the limited appropriation by my State for this service, and as, from the tenor of the conversation we last had, and the fact that there is still some field work unfinished, we can at most simply report progress, and not make a final report to our respective Legislatures, I would propose to reduce this estimate and in lieu of it, to direct Lieut. Michler to employ for the present but one draughtsman (the principal one if he pleases) upon the duplicate General map of the Eastern Shore section, and such other work on the Western section as he may deem most advisable. I shall not be prepared until after the next meeting of our Legislature to employ a large force. I shall wait for your reply to acknowledge Lieut. Michler's letter.

I am, Sir, very respectfully
Yours,
THOS. J. LEE,
Com'r for Maryland.

ELLANGOWAN P. O.,
BALTO. CO., MD., *Nov. 15th,* 1859.

Angus W. McDonald, Esqr., Com'r for Virginia, Winchester.

DEAR SIR: I beg leave to acknowledge the receipt of yours
1424 of Nov. 12 in answer to mine of Oct. 6" & Nov. 5th. I received a note from Lieut. Michler dated Nov. 3rd informing

me that you desired him to comply with our joint instructions, in reference to the survey about Smith's Islands and Smith's Point, to which I at once acquiesced. I am daily expecting to hear of his having left Washington for this purpose. I am equally desirous with yourself, that the survey of the Eastern Shore portion of the Boundary should be completed this autumn if possible. As to the office work necessary to complete the survey of the N. W. Boundary of Maryland, I am willing also to suspend that for the present owing to the small balance of appropriation remaining from my State, for that purpose, believing it would be more advisable to complete the Eastern Shore section, as that is so well advanced, but in reference to your remarks "regarding as I do any mapping of the Meridian is entirely supererogatory unless the State of Maryland and Virginia agree to adopt such meridian as the Boundary line in lieu of the one called for in the Charter to Lord Baltimore," permit me to call your attention to the Act of the General Assembly of Virginia of March 26th 1858 establishing the joint commission of which I have the honor to form a part, and to ask if in your opinion the State of Virginia does not there acknowledge and adopt the Meridian line from the Fairfax Stone to the Southern line of Penna., as the Boundary between Virginia and Maryland and direct it to be so established?

I am, sir, very truly & respectfully,

THOS. J. LEE,
Com'r for Maryland.

1425 Know Ye Therefore, that we, encouraging our royal favour, the pious and noble purpose of the aforesaid barons of Baltimore, of our special grace certain knowledge and mere motion, have given, granted and confirmed, and by this our present Charter, for us, our heirs and successors, do give, grant and confirm, unto the aforesaid Caecilius, now Baron of Baltimore, his heirs and assigns, all that part of the Peninsular or Chersonese, lying in the parts of America, between the Ocean on the East and the Bay of Chesopeake on the West, divided from the residue thereof, by a right line drawn from the promontory, or head land, called Watkin's Point, situate upon the Bay aforesaid, near the river of Wigheo on the West, unto the main Ocean on the East; and between the Boundary on the South, unto that part of the Bay of Delaware on the North, which lieth under the fortieth degree of North Latitude from the æquinoctial, where New England is terminated, and all that tract of land within the metes underwritten (that is to say) passing from the said Bay called Delaware Bay, in a right line by the degree aforesaid unto the true meridian of the first fountain of the River of Pottowmack, thence verging towards the South unto the further bank of said river & following the same on the West and South unto a certain place called Cinquak, situate near the mouth of said river, where it disembogues into the aforesaid Bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called Watkin's Point, so that the whole tract of land, divided by the line aforesaid, between the main Ocean and Watkin's

Point unto the Promontory called Cape Charles, and every the appendages thereof, may entirely remain excepted forever to us, our heirs and successors.

From Volume 4 of Maryland Historical Society's Collection
1426 of State Papers, Marked L. C. B., 1669 to 1674, A. M. (Pages 3 to 64).

Whereas, his Royal Majesty's Commission to surveyor General of Virginia, commands setting out the bounds of Virginia with a reference to his Majesty's hon'ble Governor & Council of Virginia from time to time to give advice and order for directing the said Surveyor General to do his duty appertaining to his office in order thereunto his Majesty's hon'ble Governor and Council have by letter moved the hon'ble Lord Baltimore's Lieut. General of Maryland to appoint some fitting person to meet upon the place called Watkin's Point with the Surveyor General of Virginia, and thence to run the divisional Line to the Ocean Sea &c., the hon'ble Philip Calvert, Esqr., Chancellor of Maryland and Edmund Scarborough his Majesty's Surveyor General of Virginia, after a full and perfect view taken of the point of land made by the North side of Pocomoke Bay & South side of Anemesex Bay, have and do conclude the same to be Watkin's Point, from which said point so called, we have run an East line agreeable with the extermest part of the Westermost angle of said Watkin's point over Pocomoke river to the land near Robert Holston's and there have marked certain trees which are so continued by an East line running over Swansecates Creek into the marsh of the sea side with apparent marks and Boundaries which by our mutual agreement according to the qualifications aforesaid, are to be received as the Bounds of Virginia & Maryland on the Eastern Shore of the Chesapeake Bay, in confirmation of which concurrence have set our hands and seals this 25th day of June, 1668.

(Signed) PHILIP CALVERT. [SEAL.]
EDMUND SCARBOROUGH. [SEAL.]

1427 I, J. Spear Smith, President of the Maryland Historical Society, do hereby certify that the foregoing is a true copy of the original manuscript document, now in the archives of said Society.

Baltimore, 25th Sept. 1858.

J. SPEAR SMITH,
President M. H. Society.

To All &c., whereas &c.

Now know yee, that I the said Sr. Wm. Berkeley &c. give and grant unto Samuel Smith five hundred, twenty and nine acres of land, situate, lyeing and being in the County of Northumberland, abutting Northerly upon the mouth of Potomack river, Southerly upon Little Weckacomicoe Creeke, Easterly upon ye Mayne Bay, and Westerly upon a branch that divides this land from a parcell of land commonly called the King's Neck. The said land being due unto the said Samuel Smith by and for the transportation of eleven persons into the Colony &c., To have and to hold &c., To be held

&c., Yielding &c., which payment is to be made seven years after the first grant or sealing thereof &c., ye, dated ye 18th of March, 1650.

Richmond, October 9th 1858. I certify that the foregoing is an extract from the Records of the Virginia Land Office.

S. H. PARKER,
Reg. L. Office.

Here follows a subsequent report of Col. Thomas J. Lee, Commissioner for Maryland, marked "Record of Results" in the
1428 words and figures follows, to-wit: Western Boundary of Maryland.

THOMAS J. LEE,
Commissioner &c.

Baltimore County, December 1" 1861.

Western Boundary of Maryland.

Eight permanent marks were erected in 1859, by direction of the Commissioners of Maryland and Virginia, and at the joint expense of the two States, to designate points on the Meridian of "Fairfax Stone." Their position was determined astronomically by Lieut. N. Michler, U. S. Topographical Engineers, assisted by Mr. Louis Daser. In the final computation of the observations, a slight error was detected in the position of some of these, too late to be corrected, the amount of which, together with the position of the monuments along the Boundary Line, are here given.

	Distance apart, in feet.	
I, at Fairfax Stone.....	15,110	Cut stone resting on foundation stone; this is set immediately South of the old stone mark Ffx, planted in 1746, to show the bounds of the Fairfax grant. This old stone was not disturbed.
II, on Backbone.....	30,355	Cut stone, same as No. 1, centre of stone 23 5/10 inches too far West.
1429		
III. Intersection with N. W. Virginia Turnpike near Chisholm's Mill.....	17,535	Cut stone obelisk, 5 feet high, resting on a base stone.
IV. Lauer Hill..	19,310	Mound of earth and stones around a stake, Centre of stake 8 7/10 inches too far West.
V. Intersection with Baltimore and Ohio Railroad.	24,260	Cut stone, same as at N. W. Va. Turnpike.

VI. Snaggy Mountain..	34,060	Square cut stone, 3 feet high, resting on a large rock on the top of which a cut stone obelisk.
VII. Fiek's Hill	51,245	Same as at Snaggy Mountain. Centre of Stone 7 6/10 inches too far West.
VIII. Intersection with Mason & Dixon's Line.		Cut stone 6 feet long, sunk 2½ feet in the ground. Centre of stone 28 8/10 inches too far West.

1430 In addition to these monuments, stakes squaring about 4 inches, and standing 5 feet out of the ground, were planted at the following points, along the line, as far as Stahl's Hill, by direction of the Maryland and Virginia Commissioners jointly; and thence to Mason and Dixon'- Line by the Maryland Commissioner alone.

	Distance apart in feet.	
I. Monument at Fairfax Stone.		
Stake at North Branch of Potomac.....	4090	
" on Arnold's Hill.....	2580	Sheet No. 1.
" at Laurel Hill.....	2350	19.35 sq. miles.
II. Monument at Backbone.....	6090	
Stake at branch of Youghiogheny river....	5110	*1730*
" on Freeland's hill.....	1820	X
" at Big Youghiogheny river.....	3080	1350
" on Roth's hill.....	2500	
" at Horse Shoe road.....	2060	Sheet No. 21.
" on Hunter's hill.....	4060	32.25 sq. miles.
" at Mill road.....	4025	
" " John Rinehart's road.....	3580	
III. Monument 35 beyond N. W. Va. Turnpike.....	4120	*2080*
Stake at Stahl's road.....	3710	X
" on Stahl's hill.....	3090	1030
" at Martin's road.....	2315	
1431		
Stake at Weld's road.....	2410	Sheet No. 3.
" on Ashby's hill.....	1850	25.00 sq. miles.
" at tributary of Big Yough river.....	1660	
IV. Monument on Lauer Hill.....	2500	
Stake at foot path across line.....	2765	
" on little stream.....	1680	
" at Laurel run.....	2150	*3080* X
" at little stream.....	4890	1810
" " Fredlock's road.....	1750	
" " Little Laurel run.....	1190	
" " Fredlock's road.....	790	Sheet No. 4.
" " White's road.....	1750	21.50 sq. Miles.

V. Monument on Balto. & Ohio R. R.....	2415	
Stake at Collin's road.....	3165	
" " little stream.....	3865	
" " " "	1770	
" " " "	1950	
Pile of rocks on summit.....	2650	
" " " "	4430	*2170* X
Stake on summit.....	2555	2260
" at Summer's road.....	1245	
VI. Monument on Snaggy Mountain.....	3230	Sheet No. 5.
Stake at creek.....	1820	18.05 sq. miles.
" in Rodeheaver's clearing.....	800	
1432		
Stake at White Oak creek	3385	
" " tributary of White Oak creek	690	
" " Hoy's run.....	3775	
" on summit	1340	
" at Nethkin's run	1340	
" " Browning's road.....	3225	*2155* X
" " Tar Kiln run.....	1770	1170
" " creek.....	2995	
" " Cranesville road.....	3910	Sheet No. 6.
" " Wolf's road.....	1980	16.15 sq. miles.
" " " hill.....	1815	
" " Young Wolf's road	1955	
" " Feik's Hill road.....	2260	
VII. Monument on Feik's hill.....	900	
Stake at White rock run.....	5005	
" " foot path	5880	*810* X
" " branch of Laurel run.....	1590	5070
" " Buffalo run	2245	
" " Thomas road.....	980	
" " Uppoll's road.....	5020	
" " Layton's road.....	3770	
" " Glover's road.....	2755	
" " Deitz's road.....	3340	
" " Evan's road.....	1340	*755* X
" on Evan's hill	830	580
" at Callis' stone-fence....	1710	
1433		
Stake at Moler's road.....	2180	
" " Sickle's road.....	2225	
" " Sickle's hill.....	3040	
" " Donald's road	2710	Sheet No. 7.
" " Feik's run	2250	15.20 sq. miles.
" " Scrub Glade road.....	300	
" " spring.....	825	
" " Glass' road.....	2120	
VIII. Monument at Mason & Dixon's Line.	2130	
	191,875	Sheet No. 8. 13.20 sq. miles.

During the season of 1859, when the work was executed, at the joint expense of the two States, the line was cut through the forest one road wide from Fairfax Stone, as far as Stahl's Hill, a distance of 52.265 feet, nearly ten miles, and also from Mason & Dixon's Line southerly for a distance of 2130 feet to Glass road; clearings were also made averaging about two rods wide on the tops of the following hills:

Ashby's hill.	Snaggy Mountain.
Lauer Hill.	Feik's Hill.
Fredlock's Plateau.	Evan's Hill.
Two Hills N. & S. of Balto. & Ohio R. Road.	Sickle's Hill.

But during the season of 1860, only sufficient space was cleared to enable the surveyor to prolong his line.

An area of 101 sq. miles was surveyed for the purpose of
1434 delineating the topography in the vicinity of the line. In 1859 this embraced an equal space upon each side of the line. In 1860, upon the Maryland side only.

This survey is shown upon eight sheets of maps on a scale of 1/12,000 or 1000 feet to the inch, and herewith submitted.

The following heights of points upon the line were determined by the Barometer and Trigonometrically.

	Height above the sea level.
Backbone	3323 feet.
Stahl's Hill	2699 "
Intersection of Youghiogheny river	2409 "
Ashby's Hill	2850 "
Lauer Hill	2882 "
Laurel Run	2388 "
Fredlock's Plateau	2600 "
Snowy Creek	2416 "
Intersection of Balto. & Ohio R. R	2448 "
Snaggy Mountain	3110 "
White Oak Run	2537 "
Hoy's Run	2540 "
Nethkin's Run	2573 "
Browning's Run	2595 "
Muddy Creek	2558 "
Swamp near Crane's meadow	2564 "
County road near Wolf's farm	2620 "
Wolf's Hill	2836 "
Salt Block Run	2566 "
Feik's Hill	2966 "
White Rock Run	2462 "
1435 Evan's Hill	2506 "
Sandy Run	2266 "
Sickle's Hill	2442 "
Scrub Glade Run	2188 "
Intersection with Mason & Dixon's Line	2281 "

The variation of the magnetic needle was ascertained to be in July 1860,

On the Line near Chisholm's Mill	1° 00′	West.
" " " " Craneville	1° 25′	"
" " " " Feik's Hill	1° 10′	"
" " " 5 miles North of Feik's Hill	1° 15′	"
" " " 5 " South " Penna. Line	1° 32′	"
" " " 4 " " " " "	1° 30′	"
" " " 3 " " " " "	1° 30′	"
" " " 2½ " " " " "	1° 35′	"
Intersection with Mason & Dixon's Line	1° 30′	"

Latitude.

The latitude of the Southern limits of Philadelphia (South side of Cedar Street) was determined by Mason & Dixon in 1763-64 from observations with a zenith sector to be, 39° 56′ 29″ 1. The point 15 English statute miles due South of that parallel, the Southern limits of Pennsylvania was computed by them to be in Latitude 39° 43′ 18″, We should at this day compute this distance to be 13′ 02″-7 of arc, and makes this Latitude 39° 43′ 26″.4, but independently of these observations and measurements, we have 1436 the means of ascertaining the Latitude of the N. E. Corner of the State from other sources. By continuing the latitude of the Episcopal Church at New Castle, Delaware, as given in the Coast Survey Report of 1851, with the measurements made by Col. Graham, U. S. Topo. Engineers in connection with the survey to ascertain the intersection of the Boundary Lines of the States of Maryland, Delaware and Pennsylvania, in 1849, the latitude of the N. E. Corner of the State is found to be, 39° 43′ 17″ 76. This is from the most reliable data. Its agreement with the latitude as adopted by Mason & Dixon is accidental, as they were clearly in error, either in their observations at Philadelphia or in their measurements of the distance of 15 miles.

During the survey of the Western Line, the following Latitudes were obtained by observation.

	Mea's distance from Fairfax stone.		Resulting latitudes of Fairfax stone.
	Yards.	*Arc.*	
Fairfax Stone, 39° 11′ 33″.5....	.....	.....	39° 11′ 33″.5
Lauer Hill, 39° 21′ 54″.0.....	21,000	1022″.7	39° 11′ 31″.3
Oakland, 39° 24′ 30″.0.....	26,163.3	12° 55″.8	39° 11′ 34″.2
Snaggy Mountain 39° 29′ 05″.5	35,523.3	17° 33″.4	39° 11′ 32″.1

Mean Latitude of Fairfax Stone, 39° 11′ 32″.5.

The corrected measurements along the Meridian Line adopted in the construction of the maps, make the distance from Fairfax Stone to Mason & Dixon's Line, 191,875 feet, or 36.34 miles, equal to 31′ 35″.3 of arc.

Hence the Latitude of the North West Corner of the State is 39° 43′ 07″.8, differing 10″, or 337 yards from the above lati-
1437 tude of N. E. Corner. This may be owing either to errors in our observations or measurements, or to errors in tracing the parallel by Mason & Dixon, or which is likely, to errors of both combined.

It is to be regretted that the means at our command, owing to the failure of Virginia to continue the work jointly with us, prevented our testing this last result by direct observations.

Longitude.

Transit of the Moon, and Moon culminating stars, to ascertain the probable longitude of the Meridian Line were observed as follows:

	Resulting longitude west of Wash'g obs'y, in time.	
Backbone Mountain	9′ 43″.71	
" "	9′ 56″.84	
" "	9′ 48″.97	
Laurel Hill	9′ 36″.03.	Mean, 9′ 44″.43
" "	9′ 36″.36	
Snaggy Mountain	9′ 55″.10	
" "	9′ 36″.59	
" "	9′ 41″.83	

The difference of time was also ascertained by comparison of Chronometers, transported from the Washington Observatory to Oakland, Alleghany County, by Railroad thus:

Sid. Chron. No. 196, 9m. 28s.1. Mean 9m. 27s.4.
1438 Mean time Chron. No. 2096, 9m. 26s.7.

Add difference Longitude between Oakland & Meridian Line by measurement 22,160 feet 19s.07	9m.46s.47
Mean of the two methods	9m.45s.45
In Arc	2° 26′ 21″.75
Wash'n Observatory West of Greenwich	77° 02′ 47″.06
Whence longitude of Meridian Line	79° 29′ 09″.35

The U. S. Coast Survey places the Court house at Newcastle, Delaware, in latitude 39° 39′ 32″.11.
Longitude 75° 33′ 30″.60.

From the measurements of Col. Grahame, U. S. Top. Engineers, in 1849, the distance between the Court house and the Tangent point of Maryland and Delaware Boundary is 13,357.7 feet, and the azimuth of the line from tangent point to Court house it 266° 32′ 26″.9.

As this point is in the same Meridian with the N. E. Corner of Maryland, by computation from these elements, the Longitude, N. E. Corner is 75° 46′ 59″.36.

Subtracting this from the longitude of the N. W. Corner, above given the length of the parallel forming the Northern Boundary of the State becomes 3° 42′ 10″.0., or about, 197¼ miles.

The difference in time between Oakland Station, B. & O. R. R., and Washington Monument, Baltimore, is 11 minutes and 11 seconds.

The monument erected by my direction to mark the N. W. Corner of the State falls 1360 feet, by measurement, East of one of Mason & Dixon's mounds, but as their mounds are not marked, and
1439 as it is not certain that they were intended to denote a precise number of miles, from the point of beginning, (for the stone monuments they erected at every mile do not extend beyond the 132 mile, the foot of Sideling Hill, from which point Westwardly to the Crest of the Alleghanies, their mounds were placed at irregular intervals), this determination of the Longitude of the Meridian Line cannot, at present, be tested by their measurements.

These has been two lines previously run to designate this boundary. One called the Armstrong Line, surveyed a few years ago by the compass, runs to the Westward of the line just established. The last distinct mark found of it, is on the top of Backbone, where it is some 150 feet West of our Monument No. 2.

The other line known as the "old line." A few points upon this line were identified. The first on Backbone is 50 feet East of the Monument. Another a short distance North of the Horse Shoe Road, where the fence of a field (belonging to John Schlappach, running nearly parallel with the Meridian, and 60 to 80 feet to the east of it), has been considered upon the old line. There is a distinct mark of the old line at a gate on the Mill Road near Neill's store. This is 85 feet East of the true line. There is a fence in Fredlock's clearing between Lauer Hill and the Balto. & Ohio R. R., said to be on the old line. This, by measurement is 537 feet East of the Meridian line. A mound was pointed out on the Mason & Dixon Line as designating the intersection of the old line with the Pennsylvania Boundary. This mound is 3970 feet East of our monument.

Here follows, attached to this sheet, a copy of that portion of the maps prepared under the direction of the Commissioners aforesaid, that describes the boundary line between the States of Maryland and West Virginia, from the Fairfax Stone to the Southern Line of the State of Pennsylvania, to-wit:—

(Here followed map, not reproduced by direction of counsel.)

1440 THE STATE OF MARYLAND:—

I, E. W. Le Compte, Secretary of State, of the State of Maryland, do hereby certify that the aforegoing is truly copied from the original report of the Commissioners appointed to trace, establish and mark the Boundary Line between the States of Maryland and Virginia, and the papers accompanying the same, except that the map annexed hereto is a copy only of that part of the elaborate maps

which accompany the said report, that refers to the boundary line aforesaid from the Fairfax Stone to the line between the States of Maryland and Pennsylvania, now on file in the Executive Department of the State of Maryland.

In testimony whereof, I hereunto subscribe my name and affix the seal of the office of the Secretary of State of the State of Maryland.

Done at the City of Annapolis on this twenty ninth day of April, in the year of our Lord, one thousand eight hundred and eighty-seven.

[SEAL.] E. W. LE COMPT,
Secretary of State of Maryland.

(Endorsed on cover:) Copy of Michler's Report. Exhibit Brown No. 78. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1441 EXHIBIT BROWN NO. 79.

Resolutions Adopted by the General Assembly of Maryland, May 20th 1787.

Resolved, That the Governor and Council be requested to appoint and employ some skillful person to lay out the manors, and such parts of the reserves and vacant lands belonging to this State, lying to the Westward of Fort Cumberland, as he may think fit and capable of being settled and improved, in lots of fifty acres each bounded by a fixed beginning, and four lines only, unless on the sides adjoining elder surveys; that the beginning of each lot be marked with marking irons, or otherwise, with the number thereof, and that a fair book of such survey, describing the beginning of each lot by its situation as well as number, be returned and laid before the next General Assembly; that a brief note of the improvements which may happen to be on any lot, and the name of the person, if any, settled thereon, be inserted at the foot of the certificate of survey thereof and that the reasonable expense of such surveys be paid by this State.

Resolved, that the Governor and Council be requested to cause the Auditor-General, or other proper officer, to make out an accurate and fair list of the officers and soldiers who are entitled to bounties of land under the promises of this State, and to lay the same before the next General Assembly.

Which were read the first and second time by special order and assented to.

Endorsed: Resolutions of The General Assembly of Maryland. Passed in 1787, providing for Survey of the Military Lots. Exhibit Brown No. 79. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia Filed Oct. 15, 1907.

1442 EXHIBIT BROWN No. 80.

CHAPTER XLIV.

An Act to dispose of the reserved lands westward of Fort Cumberland, in Washington county, and to fulfill the engagements made by this State to the officers and soldiers of the Maryland Line in the service of the United States.

Whereas, by an Act entitled, An Act for recruiting the quota of troops of this State in the American army, and furnishing them with cloathing and other necessaries, passed at a session of Assembly begun and held at the city of Annapolis on Friday the thirty first day of October, in the year of our Lord one thousand seven hundred and seventy-seven, and by sundry subsequent Acts, it was provided, that a bounty of fifty acres of land should be granted to each able bodied recruit who should enlist and faithfully serve for three years in the American army; and by the said first recited Act it was provided, that the said bounty should be paid to each recruit, or his legal representative, at the expiration of three years from the time of enlistment, in such manner as the General Assembly should thereafter direct; and by the said Act, and other subsequent Acts, it was provided, that a bounty of one hundred acres of land, to be procured and laid out in such manner and place within this State as the Legislature thereof should thereafter direct, should be given to every such recruiting officer, or his legal representative, who should enlist twenty able bodied effective recruits within the times in the said Acts respectively specified, and also a bounty of fifty acres of land, to be procured as aforesaid, to every recruiting officer who should enlist and deliver twenty able bodied effective recruits according to the terms of the said Acts: And whereas, by an Act, entitled, An Act to appropriate certain lands to the use of the officers and
1443 soldiers of this State, and for the sale of vacant lands, passed at a Session of Assembly begun and held at the city of Annapolis on Monday, the fifth of November, in the year of our Lord one thousand seven hundred and eighty one, all the lands within this State in Washington county, westward of Fort Cumberland, except as in the said Act is excepted, were appropriated to discharge the engagement of lands heretofore made to the officers and soldiers of this State, and the residue to the use of the public, as the General Assembly should thereafter direct: And whereas, in pursuance of a resolve of the General Assembly, at April Session, seventeen hundred and eighty-seven, authorizing the Governor and Council to appoint and employ some skilful person to lay out the manors, and such parts of the reserves and vacant lands belonging to this State, lying to the westward of Fort Cumberland, as he might think fit and capable of being settled and improved, in lots of fifty acres each, Francis Deakins was appointed and employed by the Governor and Council for that purpose, and has finished the said survey and has returned a general plot of the county westward of Fort Cumberland, on which four thousand one hundred and sixty-five lots of

fifty acres each are laid off, besides sundry tracts which have been patented, distinguishing on the plot those lots which have been settled and improved from those which remain uncultivated: And the said Francis Deakins has also returned two books, entitled A and B, in which are entered certificates of all the lots before mentioned: And whereas, it appears to this General Assembly, that there are three hundred and twenty-three families settled on six hundred and thirty-six of the aforesaid lots, which they have improved and cultivated:

II. Be it enacted, by the General Assembly of Maryland, That a preference be given to the said settlers to purchase the said
1444 six hundred and thirty-six lots by them respectively settled, not exceeding the quantities registered and noted by the surveyor in the books aforesaid, at not less than five nor more than twenty shillings per acre, one-third part thereof to be paid on the first day of September next, one other third on the first day of September, seventeen hundred and ninety, and the remaining third in twelve months thereafter, in current money; and that the price of provisions furnished and services rendered in assistance to the said Francis Deakins in surveying the said lands, be discounted out of the first or any other payment to be made by the said settlers.

III. And be it enacted, That in default of any payment to be made by any of the said settlers on the day on which the same ought to be made as aforesaid, the land unpaid for shall be liable to proclamation in the usual manner by any citizen of this State.

IV. And be it enacted, That for the ease and convenience of the people, a proper person or persons, not to exceed the number three be appointed commissioner or commissioners by the Governor and Council, who shall go into the neighborhood, and have power to decide all disputes which may arise concerning pre-emption, and shall value the said lands, those of the best quality at not more than twenty shillings, and those of the worst at not less than five shillings per acre, and all those of an intermediate quality according to their quality, having regard to the prices aforesaid.

V. And, whereas, according to the most accurate account that can now be rendered by the Auditor-General, it appears, that there has been about the number of two thousand four hundred and seventy five soldiers entitled under the several Acts of the Legis-
1445 lature to the said bounty of lands, and that there ought to be about one hundred lots set apart to fulfil the engagements of lands to recruiting officers, Be it enacted, That two thousand five hundred and seventy-five of the aforesaid lots, lying in the most fertile part of the county, and contained in the following limits, to-wit:—beginning at the mouth of Savage river, and running with the north branch of Patowmack river to the head thereof, then north with the present supposed boundary line of Maryland until the intersection of an east line to be drawn from the said boundary line, with a north course from the mouth of Savage river, will include the number of lots aforesaid, to be distributed by lot among the said soldiers and recruiting officers, and their legal representatives, by

the commissioner or commissioners hereafter to be appointed by the Governor and Council as aforesaid.

VI. And be it enacted, That part of the remaining lots be distributed by lottery among the officers, and the representatives of the officers, of the Maryland Line, who served to the end of the war, who were deranged by any of the reforms of the army, who were killed or died of their wounds received in battle, those who were disabled from further service by wounds received, and in consequence thereof retired, and those who died a natural death while in the service with the army; each officer, or his representative, to have four lots.

VII. And be it enacted, That the lots so granted to the officers aforesaid, shall be adjacent to those herein before directed to be distributed among the soldiers, and shall be contained within
1446 the following limits, to-wit: by extending the aforesaid north course from the mouth of Savage river until its intersection with an east line to be drawn from the aforesaid supposed boundary line of Maryland, will include the necessary number, allowing to each officer, or his representatives, four lots as aforesaid.

VIII. And be it enacted, that the said lots shall be distributed by lot among the said officers and representatives, by the commissioner or commissioners to be appointed by the Governor and Council as aforesaid, each ticket to contain four lots contiguous to each other, or as nearly so as may be.

IX. And be it enacted, That the lot on which William Howell lives be secured to the legal representative of —— Howell, son of the said William, which said son was a soldier in the Maryland Line, and died in the service of his country; and that in case the said son shall not have left a legal representative, entitled by law to the said lot, the same be secured to the aforesaid William Howell, his heirs and assigns, forever.

X. And be it enacted, That the remainder of the said lots be sold for any kind of specie certificates of this State, to be paid at the time of the sale.

XI. And, Whereas, it appears to this General Assembly, that ten assistant surveyors have been employed by the said Francis Deakins in the execution of the said survey, seven hundred and seventy-five days, to-wit: Henry Kemp, one hundred and twenty days, Daniel Cresap, fifty-eight days, Laurence Bringle, ninety-eight days, Benjamin Price, eighty-eight days, John Tomlinson, fifty-eight days Jonas Hogmire, eighty-four days, Thomas Orm, seventy days, John Hooker, ninety-two days, John Lynn, fifteen days, William Hoye, ninety-two days, Be it enacted, That there be allowed to each
1447 of the said assistants the sum of ten shillings current money per day.

XII. And be it enacted, That as to the lands patented or taken up within the manors and the reserves aforesaid, the General Assembly cannot with propriety give orders for any disposition thereof, but that the cases of each ought to be stated by the Governor and Council, and the Attorney-General's opinion taken, so that the claim of the State may be prosecuted or relinquished, as law and justice may require.

XIII. And be it enacted, That any of the said lands, not hereinbefore appropriated, and any other lands in this State now vacant, and to affect which no warrant hath issued, be liable to be taken up in the usual manner by warrant, at the rate of three shillings and nine-pence current money per acre, to be paid to the Treasurer of the Western Shore, in the proportions and within the times required by the Act to appropriate certain lands to the use of the officers and soldiers of this State, and for the sale of vacant lands.

XIV. And be it enacted, That the privilege of roads and waters through all the said lands be reserved to the public.

XV. And be it enacted, That the line to which the said Francis Deakins has laid out the said lots, is, in the opinion of the General Assembly, far within that which this State may rightfully claim as its Western boundary; and that at a time of more leisure the consideration of the Legislature ought to be drawn to the Western boundaries of this State, as objects of very great importance.

XVI. And be it enacted, That the said general plot and books of certificates be lodged in the Land-Office, and that the said books of certificates of the four thousand one hundred and sixty-five lots aforesaid, be considered, to all intents and purposes, as record
1448 books of the Land Office.

XVII. And be it enacted, That the necessary expenses attending the said survey shall be ascertained by the Committee of Claims at the next Session of Assembly, and that the orders given by the said Francis Deakins in favour of persons who furnished provisions and performed services in the execution of the said survey, shall be receivable in payment of the lands to be valued to the settlers aforesaid, the amount of the said orders to be debited to the said Francis Deakins, in addition to the six hundred pounds received from the Treasurer, and by him to be accounted for.

XVIII. And be it enacted, That there be allowed to the said Francis Deakins, for his trouble in completing the said work, making out the plots and registering the certificates aforesaid, the sum of two hundred pounds current money.

XIX. And be it enacted, That the commissioner or commissioners to be appointed as aforesaid, as soon as may be, give six weeks notice in the Maryland Gazette and Baltimore Journal of the time and place when and where a distribution of the aforesaid lands in pursuance of the directions of this Act, among the officers and soldiers entitled as aforesaid, shall take place; and the Auditor-General shall furnish the said commissioner or commissioners with a list of the officers and soldiers entitled as aforesaid, and no draught shall be made for any officer or soldier, unless the name of the officer or soldier shall appear in the list to be furnished by the Auditor-General as aforesaid.

XX. And be it enacted, That after the said draught shall have taken place the name of the officer and soldier shall be endorsed on the ticket containing the number or numbers, which shall be written in words at length drawn by or for such officer or
1449 soldier by the said commissioner or commissioners, and thereupon such officer or soldier, or their representative or repre-

sentatives, shall have an estate in fee-simple in the lot or lots respectively drawn, without any patent, deed or grant, to be issued for that purpose.

XXI. And be it enacted, That on payment of the valuation to be made in pursuance of the directions of this Act, by any of the settlers who shall be adjudged by the commissioner or commissioners aforesaid to be entitled to the pre-emption, a patent shall issue for the land, according to the determination of the said commissioner or commissioners, to the settler, or his representative or representatives, by the Register of the Land-Office, he or they paying the usual fees of office.

XXII. And be it enacted, That any purchaser of any of the said lots to be sold in pursuance of this Act, on payment of the purchase money, shall be entitled to a patent from the Register of the Land Office, on paying the usual fees of office.

XXIII. And be it enacted, That the said commissioner or Commissioners shall be entitled to receive ten shillings current money per day for every day he shall be actually employed in making the disturbances aforesaid, deciding disputes concerning pre-emption, and selling the lands as aforesaid.

XXIV. And be it enacted, That the said commissioner or commissioners, before he or they act as such, shall take an oath well and faithfully to discharge the duties required and enjoined by this Act, according to the best of his skill and judgment.

XXV. And be it enacted, That the said commissioner or commissioners shall make a record of all valuations by them made, and of all the lots distributed among the officers and soldiers aforesaid, and of all lots sold by them, in virtue of this Act, and return
1450 the same to the Register of the Land-Office, to be by him safely kept.

Endorsed: Act of the General Assembly of Maryland, at the November Session, 1788, Chapter 44. Exhibit Brown No. 80. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

1451 EXHIBIT BROWN No. 81.

Major John Swan, His Patent, "West Point," 461 Acres.

THE STATE OF MARYLAND, &c.:

Know Ye that whereas Major John Swan of Baltimore Town had surveyed and laid out for him a tract or parcel of land called "West Point" lying in Allegany County and containing four hundred and sixty-one acres by virtue of so much part of a warrant for five hundred and seventy-one acres obtained by him the ninth day of May Seventeen hundred and ninety-two, being due in consequence of the vacation of certificates.

The State of Maryland doth therefore hereby grant unto him the

said Major John Swan the said tract or parcel of land called "West Point," lying in Allegany County aforesaid.

Beginning at a bounded White Oak, Cucumber and Maple standing North sixty-two degrees and an half degree East three hundred and sixty-three perches from the three mile tree on a line drawn North from the head of the North branch of Potomac River and on the East side of a ridge called The Back Bone which divides the eastern and western waters and running thence North fifty degrees East twenty two perches, North five degrees East twenty perches, South seventy two degrees East forty-seven perches to a Maple and Cucumber tree South nine degrees West forty perches to a sugar tree and Maple, South thirty-nine degrees East thirty-seven perches to a large Spruce Pine, South thirty degrees East one hundred and twenty four perches to a birch tree, South seven degrees and an half degree East twenty-six perches to a Beach, South thirty-four degrees West one hundred and fifty-two perches to a Beach, South sixty-five degrees West thirty-three perches to two small beaches, North fifty-four degrees and an half degree West eighty-five perch- to a large poplar sugar tree and red oak, North seventy-seven
1452 degrees West eighty-two perches to a large White Oak, South seventy-five degrees West seventy-five perches to a sugar tree, North twenty-eight degrees West forty-six perches to a Chestnut tree, North eighty degrees West twenty-eight perches to a Cucumber tree, North fifteen degrees East thirty-six perches to a *cerry* tree, North thirty-eight degrees East twenty perches to a Maple, then by a straight line to the beginning.

Containing Four hundred and sixty-one acres, according to the Certificate of Survey thereof, taken and returned into the Land Office bearing date the thirteenth day of June, Seventeen hundred and ninety-two, and there remaining: Together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said Major John Swan his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this twenty-fourth day of June, Seventeen hundred and ninety-three.

Witness the Honorable Alexander Contee Hanson, Esquire, Chancellor.

THOS. S. LEE. [THE GREAT SEAL.] A. C. HANSON, *Chan.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the aforegoing is a true Copy of the Patent of "West Point" 461 acres, patented to Maj. John Swan 24th June, 1793, as recorded in Liber I. C. No. G folio 268 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this fourth day of
1453 October nineteen hundred and seven.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Major John Swan, his Patent of "West Point" 461 acres. Brown Exhibit No. 81. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1454 EXHIBIT BROWN No. 82.

Richard M. C. McCulloh and William Pennington, Their Patent, "Siege of Acre Resurveyed," 828¾ Acres, Patented 22nd April, 1887.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye, that Richard S. McCulloh of Garrett County and William C. Pennington of Baltimore City, on the sixth day of January, eighteen hundred and eighty-four, obtained out of the Land Office of Maryland, a Special Warrant of Resurvey to resurvey a tract or parcel of land called "Siege of Acre" lying in Garrett County aforesaid, with liberty of correcting errors, adding any contiguous vacancy and of reducing the whole into one entire tract:

In pursuance whereof a resurvey was made of the aforesaid land and a certificate thereof returned, when the same was found to contain (with thirty-five acres and one half of an acre of vacant land added) the quantity of eight hundred and twenty-eight acres and three fourths of an acre and called "Siege of Acre Resurveyed," as appears: That the said vacant land contained therein has been duly compounded on according to law, as appears: And the said Richard S. McCulloh having by his assignment bearing date the thirteenth day of July, Eighteen hundred and eighty-six, transferred all his right, title and interest (being one-half interest in said tract) in the said tract to Richard McCulloh of the State of Louisiana.

The State of Maryland, doth therefore Grant and Confirm unto them the said Richard *McMculloh* and William C. Pennington to said land resurveyed as aforesaid, with the vacancy added and called "Siege of Acre Resurveyed" lying in Garrett County aforesaid

Beginning for the outlines of the whole at a stake stand-
1455 ing West eight perches from the end of the first line of Lot Eleven hundred and two and on the dividing line between the States of Maryland and West Virginia, as now recognized and established, one mile and one hundred and seventy-four and a half perches, North from Fairfax Stone, and running thence on said line with a variation of two and one quarter degrees to the right, North, five hundred perches, then South, fifty-two degrees East, one hundred and twenty-six perches to the end of the fifteenth line of "West Point" patented to John Swann the twenty-fourth day of June, Seventeen hundred and ninety-three, then reversing its lines and bounding thereon, South, fifteen degrees West, thirty-six perches; South, eighty degrees East, twenty-eight perches; South, twenty-eight degrees East, forty-six perches; North, seventy-five degrees East, seventy-five perches; South, seventy-seven degrees East, eighty-two perches; South, fifty-four degrees and thirty minutes East, eighty-

five perches; North, sixty-five degrees East, thirty-three perches; North, thirty-four degrees East, one hundred and fifty-two perches to the end of the seventh line of "West Point," then South, thirty-eight degrees forty-five minutes East, one hundred and forty-seven perches, to the end of the second line of Lot Eleven hundred and fifty-seven; then with the third lines of Eleven hundred and fifty-seven Eleven hundred and fifty-six Eleven hundred and fifty-five and Eleven hundred and fifty-four, Eleven hundred and fifty-three and part of the third line of Eleven hundred and fifty-two, South, fifty-three degrees West, four hundred and twenty-one perches, to the end of the third line of Eleven hundred and four and with its fourth and fifth North, eighty-one degrees and thirty min-
1456 utes West, ninety perches; South, seventy-four perches to the third line of Eleven hundred and fifty and with said third line West, forty perches to its end, then with part of the given line of Eleven hundred and fifty, South, ten and one half perches; then with the second line of Eleven hundred and two reversed and extended West, one hundred and one and one half perches to the beginning.

Containing and now laid out for eight hundred and twenty-eight and three quarter acres of land, more or less, according to the Certificate of Resurvey thereof taken and returned into the Land Office, bearing date the thirtieth day *day* of April, Eighteen hundred and eighty-four and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging; To Have and To Hold the same unto them the said Richard McC. McCulloh and William C. Pennington their heirs and assigns forever, To hold as Tenants in Common.

Given under the Great Seal of the State of Maryland this twenty-second day of April, Eighteen hundred and eighty-seven.

HENRY LLOYD, [THE GREAT SEAL.] *Governor.*

LAND OFFICE OF MARYLAND.

I certify that the aforegoing Patent is proper to be issued. In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland this 19th day of April, Eighteen hundred and eighty-seven.

[Seal Land Office of Maryland.]

J. THOMAS SCHARF,
Commissioner of the Land Office.

1457 LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the aforegoing is a true Copy of the Patent of "Siege of Acre Resurveyed" 828¾ acres, as recorded in Liber W. R. H. No. 2 folio 220 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this third day of September nineteen hundred and six.

[SEAL.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Richard M. C. McCulloh and William Pennington, their Patent, "Siege of Acre Resurveyed" 828¾ acres. Exhibit Brown No. 82. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1458 EXHIBIT BROWN No. 83.

At the request of Wm. C. Pennington this deed was recorded July 1" 1890 at 8 o'clock a. m.

STATE OF LOUISIANA,
Parish of Ascension:—

Be it remembered, that on the Fourteenth day of the month of June, in the year eighteen hundred and ninety, by this deed, Richard McC. McCulloch and Bertha M. McCulloch, his wife, both of the Town of Donaldsonville, in the State of Louisiana, for and in consideration of the sum of five dollars, cash in hand paid by William C. Pennington, Esq., of the City of Baltimore, in the State of Maryland, and of other and valuable considerations, have granted, bargained, transferred and conveyed, and do by these presents, grant, bargain, sell, transfer, convey and set over unto the said William C. Pennington, all and singular the following described property, to-wit: First: An undivided moiety or half interest in, to and of all that certain tract or parcel of land lying and being situated in Garrett County, Maryland, known as "Siege of Acre" (of which the said William C. Pennington holds and owns the other moiety patented by the State of Maryland, Dec. 4th, 1839, for the said R. McC. McCulloch's title thereto, see deed to him from R. S. McCulloch and wife, dated January 25th 1883, recorded among the Land Records of Garrett County aforesaid, in Liber W. H. T., No. 7, folio 160. And second: an undivided moiety or half share in all that certain tract or parcel of land also situated and lying in said County and State, known as "Siege of Acre Re-surveyed," patented by the State of Maryland, April 22nd, 1887, to the said R. McC. McCulloch and William C. Pennington as tenants in common equally.

Together with all the rights, privileges and advantages belonging thereto or in any wise appertaining.

1459 To have and to hold the same unto the said William C. Pennington, his heirs, executors and assigns, in fee simple and forever.

And the said Richard M. McCulloch and said Bertha, his wife, each and both do covenant to warrant specially the said premises and to execute such other assurance or assurances thereof as may be requisite.

Witness our hands and seals.

R. M. McCULLOCH.
BERTHE McCULLOCH.

Test to signature of R. McC. McCulloch & Bertha:
HENRY T. SLOFFER.
J. L. GANDETT.

DARK PAGE

STATE OF LOUISIANA,
Parish of St. James:

Before me, the undersigned authority, personally came and appeared Richard McC. McCulloch to me personally known to be the party whose signature is attached to the foregoing deed, who acknowledged the same to be his genuine signature and to have been attached thereto for the purposes therein set forth.

In witness whereof, these are signed and have my official seal, June 17th 1890.

[SEAL.]

LOUIS A. NELLUM,
Clerk 22nd Jud. Dist. Court, State of Louisiana, in and for the Parish of St. James, ex-Officio Notary Public of Said Parish.

1460 STATE OF LOUISIANA,
Parish of Ascension:

Before me, the undersigned authority, personally came and appeared Bertha M. McCulloch to me known to be the party whose signature is attached to the foregoing instrument, who acknowledged separate and apart from her husband, Richard McC. McCulloch, and without being influenced thereto by him, that said signature was her true and genuine signature and attached to said deed for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal this 18th June, 1890.

[SEAL.]

J. A. LAUDRY,
Clerk of the 22nd Judicial District Court, State of Louisiana, in & for Parish of Ascension, and ex-Officio Notary Public of Said Parish.

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and aforegoing is a true copy taken from Liber E. Z. T., No. 16, folios 94 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 8th day of September, A. D. 1906.

[SEAL.]

E. Z. TOWER, *Clerk.*

Endorsed: R. M. McCulloch & wife to Wm. C. Pennington. Certified Copy of Deed. Exhibit Brown No. 83. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

BLEED THRU

1461 EXHIBIT BROWN No. 84.

At the request of The J. L. Rumbarger Lumber Company, this deed was recorded May 4" 1893, at 8 o'clock A. M.

This deed, made this Twenty fifth day of April, in the year eighteen hundred and ninety three by William C. Pennington and Emily H. Pennington, his wife, of the City of Baltimore, and State of Maryland.

Witnesseth, that in consideration of the sum of $6,500, (sixty five hundred dollars) and all interest due thereon, the receipt whereof is hereby acknowledged the said William C. Pennington, and Emily H. his wife, do hereby grant and convey unto The J. L. Rumbarger Lumber Company, a Corporation organized and doing business under the Laws of the State of West Virginia, its successors and assigns, in fee simple.

All that tract or parcel of land in Garrett County, State of Maryland, which by patent, dated April, 22" 1887, and recorded in the Land Office of Maryland, in Liber W. R. H. No. 2 folio 220 &c. was granted by the said State of Maryland, called "Siege of Acre Re-surveyed" to the said Wm. C. Pennington and Richard McC. McCulloh, as tenants in common, and thus in said patent described, Viz.

Beginning for the same at a stake standing West, eight perches from the end of the first line of Lot 1102, and on the dividing line between the States of Maryland and West Virginia, as now recognized and established, one mile and one hundred and seventy four and a half perches North from Fairfax Stone, and running thence on said line with a variation of two and one quarter degrees to the right, North 500 perches then South fifty two degrees East, 126 perches to the end of the 15th line of "West Point," patented to John Swan, 24th June, 1793, then reversing its lines, and

1462 bounding thereon, South fifteen degrees West, 36 perches, South eighty degrees East, 28 perches, South twenty eight degres East, 46 perches, North seventy five degrees East, 75 perches, South seventy seven degrees East, 82 perches, South fifty-four degrees and thirty minutes East, 85 perches, North sixty five degrees East, 33 perches, North thirty four degrees East, 152 perches to the end of the seventh line of "West Point," then South thirty eight degrees forty five minutes East, 147 perches to the end of the second line of Lot 1157, then with the third lines of Lots 1157, 1156, 1155, 1154, 1153, and part of the third line of Lot 1152, South fifty three degrees West, 421 perches to the end of the third line of Lot 1104, and with its fourth and fifth lines, North eighty one degrees and thirty minutes West 90 perches, South 74 perches to the third line of Lot 1150, and with said third line West, 40 perches to its end, then with part of *of* the given line of Lot 1150, South 10½ perches then with the second line of Lot 1102 reversed and extended West, 10½ perches to the beginning, containing 828¾ acres of land, more or less, (for the said Wm. C. Pennington's title to the McCulloh

moiety under said patent, see deed from Rd. McC. McCulloh and wife to him, dated June 14th, 1890, recorded among the Land Records of Garrett County, Md. in Liber E. Z. T. No. 16, fol. 94 &c.

And the said William C. Pennington, covenants to warrant said premises specially, and to execute such further assurance hereof as may be requisite.

Witness our hands and seals.

WM. C. PENNINGTON. [SEAL.]
EMILY H. PENNINGTON. [SEAL.]

Test:
E. B. GRAFF.

1463 STATE OF MARYLAND,
City of Baltimore, set:

I hereby certify, that on this 25" day of April, 1893, before the subscriber, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, personally appeared William C. Pennington and Emily H. Pennington, his wife and severally acknowledged the above instrument of writing to be their respective act and deed.

E. BEATTY GRAFF.

STATE OF MARYLAND,
Baltimore City, set:

I hereby certify, that E. Beatty Graff, Esquire, before whom the annexed acknowledgments were made, and who has thereto subscribed his name, was at the time of so doing, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, I further certify that I am acquainted with the hand writing of the said Justice, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereunto set my hand and affix the Seal of the Superior Court of Baltimore City, this 25" day of April, A. D. 1893.

[SEAL.] JAS. BOUD,
Clerk of the Superior Court of Baltimore City.

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and
1464 aforegoing is a true copy taken from Liber E. Z. T., No. 20, folios 571 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court for Garrett County, at Oakland, this 8th day of September, A. D., 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Wm. C. Pennington and wife to The J. L. Rumbarger Lumber Company. Certified copy of Deed. Exhibit Brown No. 84. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1465 EXHIBIT BROWN No. 85.

At the request of C. W. Daily this Deed was recorded March 17" 1898 at 8 o'clock A. M.

This deed, made this Fifteenth day of March in the year eighteen hundred and ninety eight between the J. L. Rumbarger Lumber Company, a corporation under the laws of the State of West Virginia, Grantor, of the first part, and the Davis Coal and Coke Company, a corporation under the laws of the same State, Grantee, party of the second part.

Witnesseth, That for and in consideration of the sum of Twenty two thousand ($22,000.00) dollars, the receipt of which is hereby acknowledged, and other valuable considerations passing from the party of the second part to the party of the first part, the said J. L. Rumbarger Company doth grant and convey, with general warranty, unto the said party of the second part, the following tracts or parcels of land lying, being and situate in the County of Garrett and State of Maryland, viz:—

First. That certain tract or parcel of land lying in said County, called "Elk Garden", containing 997 acres, more or less, which was conveyed to the said J. L. Rumbarger Lumber Company by George W. Dobbin, by deed bearing date October 29", 1887, and recorded among the land records of said Garrett County, in Liber E. Z. T. No. 13, folio 68, to which deed reference is hereby had for a more particular description of said land.

Second. All that certain part of a tract of land called "William and James", situate in said County, and containing 38½ acres, more or less, which was conveyed to the said J. L. Rumbarger Lumber Company by John F. Ridder and wife, by deed bearing date September 22", 1887, and recorded among the Land records of said Garrett County, in Liber W. H. T. No. 12, folio 785, to which deed reference is hereby had for a more particular description of said land.

1466 Third. That certain tract or parcel of land known as "Fairfax", situate in said County, containing 200 acres, more or less; three undivided tenths of which was conveyed to the said J. L. Rumbarger Lumber Company by John P. Hubbard and wife, by deed bearing date the first day of May, 1885, and recorded in said Garrett County, in Liber W. H. T. No. 10, folio 299, to which deed reference is had for a more particular description thereof; and the remaining seven undivided tenths of which was conveyed to the said J. L. Rumbarger Lumber Company by William C. Pennington and wife, by deed bearing date the 21st day of February, 1893, and recorded among the land records of said Garrett County, in Liber E. Z. T. No. 20, folio 416 &c., to which deed reference is

also had for a more particular description of the said tract or parcel of land.

Fourth. That certain tract or parcel of land lying in said County of Garrett, called "Siege of Acre, Resurveyed", containing 828¾ acres, more or less, which was conveyed to the said J. L. Rumbarger Lumber Company by William C. Pennington and wife, by deed bearing date April 25", 1893, and recorded among the land records of Garrett County Maryland, in Liber E. Z. T. No. 20, folio 571 &c., to which deed reference is hereby had for a more particular description of said tract of land.

Fifth. That certain other tract or parcel of land situate — said County, called, "Red Oak Ridge", containing 143 acres, more or less, which was conveyed to the said J. L. Rumbarger Lumber Company by Stingley Clark and wife, by deed bearing date June 17" 1893, recorded among the land records of said Garrett County, in Liber E. Z. T. No. 22, folio 109 &c., to which deed reference is hereby had for a more particular description of said land.

1467 To have and to hold each and all of the several tracts of land aforesaid, together with all rights, ways, privileges, improvements and appurtenances of whatsoever kind thereunto belonging or appertaining to the said J. L. Rumbarger Lumber Company, its successors, alienees, and assigns in fee simple forever.

And the party of the first part does hereby appoint Robert F. Whitmer, its agent and attorney for it, and in its name to acknowledge this deed as the act and deed of the party of the first part.

In testimony whereof, the said party of the first part hath caused this deed to be signed on its behalf by Robert F. Whitmer, its President, and has caused its corporate seal to be hereto affixed.

J. L. RUMBARGER LUMBER COMPANY,
Per ROBT. F. WHITMER, *Its President.*

Witness:
C. W. DAILEY.

[CORPORATE SEAL.]

Attest:
MARTIN LANE, *Treasurer.*

DISTRICT OF COLUMBIA,
City of Washington, To wit:

I hereby certify, that on this 16th day of March, 1898, before me, the subscriber, a Notary Public, in and for the District and City aforesaid personally appeared Robert F. Whitmer, the above named agent and attorney of the grantor in the foregoing deed, and did acknowledge the foregoing to be the act and deed of the said J. L. Rumbarger Lumber Company.

In witness whereof, I have hereunto set my hand and affixed my Notarial Seal the day and date last above written.

[SEAL.]
ALBERT W. SIOUSSA,
Notary Public, D. C.

1468 STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and aforegoing is a true copy taken from Liber E. Z. T., No. 34, folio 186 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 8th day of September, A. D., 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: J. L. Rumbarger Lumber Company To Davis Coal and Coke Company. Certified Copy of Deed. Exhibit Brown No. 85. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907. 1.50.

1469 EXHIBIT BROWN No. 86.

Richard S. McCulloh and Daniel E. Offut, Their Patent. "Troas Resurveyed," 933 1/4 Acres, Patented 22nd Jan., 1896.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye, that whereas Richard S. McCulloh and Daniel E. Offut, of Garrett County, on the second day of February, Eighteen hundred and ninety-five, obtained out of the Land Office of Maryland a Special Warrant of Resurvey to resurvey the following tract or parcel of land, lying in Garrett County, viz: "Troas", with liberty of correcting errors, adding any contiguous vacancy and of reducing the whole into one entire tract.

In pursuance whereof a resurvey was made of the aforesaid tract and a Certificate thereof returned, when the same was found to contain, with seventy-eight acres and one hundred and eight perches of vacant land added, the quantity of nine hundred and thirty-three and a quarter acres, more or less, called "Troas Resurveyed," as appears: And the said Richard S. McCulloh and Daniel E. Offut having fully compounded for said vacancy according to law:

The State of Maryland, doth therefore, hereby Grant and Confirm unto them the said Richard S. McCulloh and Daniel E. Offut the said land, resurveyed as aforesaid, with the vacancy added, reduced into one entire tract, called "Troas Resurveyed," lying in Garrett County aforesaid.

Beginning for the outlines of the same at the original bounded White Oak and Cucumber Trees, the latter now gone, the beginning trees of a tract of land called "West Point," and running thence reversing the given and last lines of said tract of land, South,
1470 fifty degrees West, two hundred and eighty-four perches; South, thirty-eight degrees West, twenty perches to the third line of a tract of land called "Seige of Acre"; and reversing it, North, forty-seven degrees West, one hundred and forty-five perches to a

post and stone-pile on the "Michler" State line dividing the States of Maryland and West Virginia (one hundred and five perches to the inner line of said vacancy): then with said State Line North, five hundred and forty perches to the third line of a tract of land called "Covent Garden"; and reversing it South, seventy-two degrees East, one hundred and ninety perches to its beginning near a stone and Cucumber tree marked with several hacks, being also the end of an agreed Division line fixed by the owners of "Troas" and "Bank Property"; and running thence with said dividing line and *and* line of possession as follows, South thirty-four and one half degrees East, eleven and one half perches to fence possession line; and around with it North, eighty-six and three fourth degrees West, eleven and three fourth perches; South, forty-one and three fourth degrees West, thirty-four perches and twenty links; South, thirty-five and one half degrees West, six perches; South, fifty-two and one half degrees West, eleven perches; South, fifty-seven and three fourth degrees West, ten perches; South, fifty two and one half degrees West, thirteen and one half perches; South, forty and one half degrees West, ten perches South, forty-seven and one fourth degrees West, three and one half perches; South, nineteen and three fourths degrees East, eight perches; South, twenty four and three fourth degrees East, nine perches; South, fifty-five and one fourth degrees West, nine perches; South, thirty-six and one half degrees West, twenty-two perches; South, sixty degrees East, thirteen and one half perches; South, thirty-nine and three fourth degrees West, twenty-three perches; South, thirty-six and three fourth de-
1471 grees West, thirteen and one half perches; South, forty-one and three fourth degrees East, eighteen perches; North, sixty-nine and three fourth degrees East, eighteen and one half perches; North, forty and one fourth degrees East, twenty-one perches and three links; North, sixty-nine and three fourth degrees East, twenty-six perches; North, thirty-five degrees East, fourteen perches; South, forty-five degrees East, twenty-five perches; North, seventy-five degrees East, fifteen and one half perches; North, fifty-five and three fourth degrees East, thirty-six perches; North, twenty-nine degrees East, six perches; North, forty-seven degrees West, thirty-three perches and three links; North, forty-one and one half degrees East, twenty six and one half perches to the aforesaid dividing line; and with it South, thirty-four and one half degrees East, three hundred and six perches to a stake and stone pile at the South end of the said division line fixed by the said owners; then North, forty-seven and one half degrees East, sixteen and one half perches to a stake standing at the end of three hundred and seventy-one perches on the 22nd line of a tract of land called "Elk Garden"; and reversing it, South, sixteen and one half degrees East, one hundred and eighty-four perches to a stake standing at the end of fifty-four perches on the sixth line of a tract of land called "West Point"; then reversing the first five and a part of the sixth lines of said tract; North, thirty degrees West, fifty-four perches; North, thirty-nine degrees West, thirty-seven perches; North, nine degrees East, forty perches to a Cucumber Stump of the original bounded tree; North, seventy two

degrees West, forty-seven perches; South, five degrees West, twenty perches; and then South, fifty degrees West, twenty-two perches to the beginning:

Containing and now laid out for Nine Hundred and thirty-
1472 three and one fourth acres of land, more or less, according to the Certificate of Survey thereof, taken and returned into the Land Office of Maryland, bearing date the thirty-first day of May, Eighteen hundred and ninety-five, and there remaining: Together with all rights, profits, benefits and privileges thereunto belonging: To Have -nd To Hold the same unto them the said Richard S. McCulloh and Daniel E. Offut, their heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this twenty second day of January, Eighteen hundred and ninety-six.

LLOYD LOWNDES, [THE GREAT SEAL.] *Governor.*

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify that the aforegoing Patent is proper to be issued. In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this twenty first day of January, Eighteen hundred and ninety-six.

[Land Office of Maryland.]

PHILIP D. LAIRD,
Commissioner of the Land Office.

LAND OFFICE OF MARYLAND, *sct:*

I hereby certify, that the aforegoing is a true Copy of the Patent of "Troas Resurveyed" 933 1/4 acres, as recorded in Liber W. R. H. No. 2 folio 567 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this third day
1473 of September nineteen hundred and six.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Richard S. McCulloh and Daniel E. Offut, their Patent "Troas Resurveyed" 933 1/4 acres. Exhibit Brown No. 86. Supreme Court U. S. No. 1 Original, Oct. Term 1907 Maryland *v.* West Virginia Filed Oct. 15, 1907.

1474 EXHIBIT BROWN NO. 87.

At the request of Merritt Wilson this deed was recorded March 14" 1896 at 8 o'clock a. m.

This Deed, made this seventh day of February, in the year eighteen hundred and ninety six, by and between Daniel E. Offutt and Arabella A. Offutt, his wife, of Oakland, Garrett County, in the State of Maryland, and Margaretta Grace Brown McCulloh of Baltimore City, in the State of Maryland, sole heir at law of Richard S. Mc-

Culloh, late of Baton Rouge, Louisiana, deceased, parties of the first part, and The Wilson Lumber Company of Garrett County, a corporation duly incorporated under the laws of Maryland, of Garrett County, in the State of Maryland, party of the second part, Witnesseth:

That for and in consideration of the sum of Three thousand dollars, lawful money of the United States of America, unto them well and truly paid or secured to be paid, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained and sold, and by these presents do grant, bargain, sell and convey, unto the said party of the second part, its successors and assigns, forever in fee simple.

All that tract, piece or parcel of land situated, lying and being in Garrett County, in the State of Maryland aforesaid, which is described as follows, towit: All that tract of land called "Troas Resurveyed", and contained within the following metes and bounds, courses and distances, towit: Beginning for the outlines of the same at the original bounded white oak and cucumber trees, the latter now gone, the beginning trees of a tract of land called "West Point", and running thence reversing the given and last lines of said tract of land, South fifty degrees West, two hundred and eighty
1475 four perches; South thirty eight degrees West, twenty perches to the third line of a tract of land called "Siege of Acre", and reversing it, North forty seven degrees West, one hundred and forty five perches to a post and stone pile on the "Michler State Line" dividing the States of Maryland and West Virginia (one hundred and five perches to the inner line of said Vacancy), then with said State Line, North five hundred and forty perches to the third line of a tract of land called "Covent Garden", and reversing it, South seventy two degrees East, one hundred and ninety perches to its beginning near stone and cucumber tree marked with several hacks, being also the end of an agreed Division line fixed by the owners of "Troas" and "Bank Property", and running thence with said dividing line and line of possessions as follows: South thirty four and one half degrees East, eleven and one half perches to fence, possession line, and around with it, North eighty six and three fourth degrees West, eleven and three fourth perches, South forty one and three fourth degrees West, thirty four perches and twenty links, South thirty five and one-half degrees West, six perches, South fifty two and one-half degrees West, eleven perches; South fifty seven and three-fourth degrees West, ten perches; South fifty two and one half degrees West, thirteen and one half perches; South forty and one half degrees West, ten perches; South forty seven and one-fourth degrees West, three and one half perches, South nineteen degrees East, eight perches; South twenty four and three-fourth degrees East, nine perches; South fifty five and one fourth degrees West, nine perches; South thirty six and one-half degrees West, twenty two perches; South sixty degrees East, thirteen and one-half perches; South thirty nine and three fourth degrees

West, twenty three perches; South thirty six and three fourth
1476 degrees West, thirteen and one-half perches; South forty one and three-fourth degrees East, eighteen perches; North sixty nine and three-fourth degrees East, eighteen and one-half perches; North forty and one fourth degrees East, twenty one perches and three links; North sixty nine and three fourth degrees East, twenty six perches; North thirty five degrees East, fourteen perches; South forty five degrees East, twenty five perches; North seventy five degrees East, fifteen and one-half perches; North fifty five and three-fourth degrees East, thirty six perches; North twenty nine degrees East, six perches; North forty seven degrees West, thirty three perches and three links; North forty one and one half degrees East, twenty six and one-half perches to the aforesaid dividing line, and with it, South thirty four and one half degrees East, three hundred and six perches to a stake and stone pile at the South end of the said division line fixed by the said owners, then North forty seven and one-half degrees East, sixteen and one-half perches to a stake standing at the end of three hundred and seventy one perches on the 22″ line of a tract of land called "Elk Garden", and reversing it, South sixteen and one half degrees East, one hundred and eighty four perches to a stake standing at the end of fifty four perches on the sixth line of a tract of land called "West Point", then reversing the first five and part of the sixth lines of said tract, North thirty degrees West, fifty four perches; North thirty nine degrees West, thirty seven perches; North nine degrees East, forty perches to a cucumber stump of the original bounded tree; North seventy two degrees West, forty seven perches; South five degrees West, twenty perches, and
then South fifty degrees West, twenty two perches to the
1477 beginning, containing and now laid out for Nine hundred and thirty three and one-fourth acres of land, more or less, according to the certificate of survey thereof taken and returned into the land Office of Maryland, bearing date the thirty first day of May, eighteen hundred and ninety five. This being the same tract of land that was patented to the said Daniel E. Offutt and Richard S. McCulloh by the State of Maryland by its patent bearing date on the 22″ day of January, in the year eighteen hundred and ninety six, and recorded in Liber W. R. H., No. 2, folio 567 &c., one of the Land Records of the Land Office of Maryland.

To have and to hold the aforegoing described tract of land, together with all and singular the buildings and improvements thereupon erected, made or being, and all the rights, privileges, appurtenances and advantages thereunto belonging or in any manner appertaining, unto and to the only proper use, benefit and behoof of the said The Wilson Lumber Company of Garrett County", and its successors and assigns, forever in fee simple.

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed, and that they will execute such further assurances thereof as may be necessary.

In testimony whereof, the said parties of the first part have hereunto subscribed their names and affixed their seals.

D. E. OFFUTT. [SEAL.]
ARABELLA A. OFFUTT. [SEAL.]
MARGARETTA GRACE B. McCULLOH. [SEAL.]

Attest as to Daniel E. Offutt and wife
Attest:
JAMES A. DELAWDER.
Attest as to Grace McCulloh,
S. MAGRUDER TUBMAN.

1478 STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify that on this 21" day of February, in the year eighteen hundred and ninety six, before me, the subscriber, a Justice of the Peace of the State of Maryland in and for Garrett County aforesaid, personally appeared Daniel E. Offutt and Arabella A. Offutt, his wife, and acknowledged the aforegoing deed to be their respective act.

JAMES A. DELAWDER, *J. P.*

STATE OF MARYLAND,
Baltimore City, To wit:

I hereby certify that on this seventh day of February, in the year eighteen hundred and ninety six, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Margaretta Grace Brown McCulloh and acknowledged the aforegoing deed to be her act.

S. MAGRUDER TUBMAN, *J. P.*

STATE OF MARYLAND,
Baltimore City, sct:

I hereby certify that S. Magruder Tubman, Esquire, before whom, the annexed acknowledgment was *amde*, and who has thereto subscribed his name, was, at the time of so doing a Justice of the Peace of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the handwriting of the said Justice, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, this 7th day of
1479 February, A. D., 1896.

[SEAL OF COURT.] ROBERT OGLE,
Clerk of the Superior Court of Baltimore City.

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and aforegoing is a true copy taken from Liber E. Z. T., No. 30, folios 78 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court for Garrett County, at Oakland, this 6th day of September, A. D., 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Certified Copy of Deed Daniel E. Offutt, *et al.* To The Wilson Lumber Company of Garrett County. Exhibit Brown No. 87. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1480 EXHIBIT BROWN No. 88.

At the request of Merritt Wilson the following deed was recorded January 13th 1899 at 8 o'clock a. m.

This Deed, made this thirty first day of December, in the year one thousand eight hundred and ninety eight, by The Wilson Lumber Company of Garrett County, a body corporate of the State of Maryland, Witnesseth:

That for and in consideration of the sum of eighteen hundred dollars, current money in hand paid, the receipt whereof is hereby acknowledged, the said The Wilson Lumber Company of Garrett County, does hereby bargain, sell, give, grant and convey unto Eliza Wilson of Garrett County, aforesaid, her heirs and assigns,

All that tract of land situate, lying and being in Garrett County, in the State of Maryland, called, known and designated as "Troas Resurveyed," containing the quantity of Nine Hundred and thirty three and one fourth acres, and being the same tract which was conveyed to the said The Wilson Lumber Company of Garrett County, by Daniel E. Offutt and others by deed bearing date the seventh day of February, A. D., 1896, and duly recorded in Liber E. Z. T., No. 30, folio 78 &c., one of the Land Records of Garrett County aforesaid; to which said deed especial reference is hereby made for a full and complete description of said tract of land, by courses and distances, metes and bounds.

Together with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the above granted property, with all and singular the appurtenances thereto belonging, unto the said Eliza Wilson, her heirs and assigns, forever in fee simple.

1481 And the said The Wilson Lumber Company of Garrett County, hereby covenants with the said Eliza Wilson that it will warrant specially the property hereby conveyed, and that it will

execute such other and further assurances of said land as may be requisite.

And this deed further witnesseth, that the said The Wilson Lumber Company of Garrett County, does hereby constitute and appoint Marshal N. Wilson of said Garrett County, to be its attorney, for it and in its name, and as and for its corporate act and deed, to acknowledge this deed before any person having authority by the laws of the State of Maryland to take such acknowledgment, to the intent that the same may be duly recorded.

As witness the corporate seal of the said The Wilson Lumber Company of Garrett County, and the signature of Merritt Wilson, the President thereof, the day and year first above written.

[CORPORATE SEAL.] MERRITT WILSON,
President of the Wilson Lumber Company of Garrett County.

Test:
JOHN T. SINCELL.
M. N. WILSON, *Sec'y.*

[2 One dollar & 1 fifty cents U. S. I. R. Stamps, Cancelled.]

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify that on this 31" day of December, in the year one thousand eight hundred and ninety eight, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County aforesaid, personally appeared Marshall N.
1482 Wilson, the attorney named in the aforegoing deed, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said deed to be his act and the act of the said The Wilson Lumber Company of Garrett County.

JOHN T. SINCELL, *J. P.*

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify the above and aforegoing to be a true copy taken from Liber E. Z. T., No. 36, folios 141 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court at Oakland, this 7th day of September, A. D., 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Certified Copy of Deed from The Wilson Lumber Company of Garrett County to Eliza Wilson. Exhibit Brown No. 88. Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1483 EXHIBIT BROWN No. 89.

At the request of Oscar Roth this deed was recorded January 26th 1900 at 2.20 o'clock p. m.

This Deed, made this 29th day of December, in the year one thousand eight hundred and ninety nine, by Eliza Wilson of Garrett County, in the State of Maryland, Witnesseth:

That the said Eliza Wilson for and in consideration of the sum of Six hundred and twenty nine dollars, current money, to her in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell and convey, unto Oscar Roth of Garrett County, in the State of Maryland, his heirs and assigns, forever in fee simple:

All that lot, piece or parcel of ground situated, lying and being in the County of Garrett and State of Maryland aforesaid, which is known and designated as a part of a tract of land called "Troas Resurveyed," and Beginning for the said part hereby intended to be conveyed, at a marked White Oak tree, one of the corners of the farm on which Summers Mosser now lives, and running North eighty five degrees West, ninety seven perches to a stake at the "Michler State Line," thence with said State line, North two hundred and three perches to a line of a tract of land known as "Covent Garden," and reversing it, South seventy two degrees East, one hundred and ninety perches to a stone and cucumber tree marked with several hacks, and running thence South thirty four and one-half degrees East, eleven and one half perches to the fence possession line of the Mosser Farm, and around with it North eighty six and three fourths degrees West, eleven and three-fourths perches, South forty one and three-fourth degrees West, thirty four perches and twenty links, South thirty five and one half degrees, West, six perches, South fifty two and one half — West, eleven perches, South
1484 fifty seven and three-fourth degrees West, ten perches, South fifty two and one-half degrees West, thirteen and one-half perches, South forty and one-half degrees West, ten perches, South forty seven and one-fourth degrees West, three and one-half perches, South nineteen and three-fourth degrees East, eight perches, South twenty four and three-fourth degrees East, nine perches, South fifty five and one-fourth degrees West, nine perches, South thirty six and one-half degrees West, twenty two perches, South sixty degrees East, thirteen and one half perches, South thirty nine and three-fourths degrees West, twenty three perches, South thirty six and three fourt- degrees West, thirteen and one-half perches to the beginning, containing one hundred and fifty seven and one fourth acres, more or less. This being a portion of the same parcel or tract of land which was conveyed to the said Eliza Wilson by The Wilson Lumber Company of Garrett County by deed dated December the thirty first, eighteen hundred and ninety eight, and recorded in Liber E. Z. T., No. 36, folio 141 &c., one of the Land Records of Garrett County, Maryland.

To have and to hold the above described piece or parcel of ground, together with the buildings and improvements thereon, and all the rights, privileges, appurtenances and advantages to the same belonging or in any wise appertaining, unto and to the only proper use, benefit and behoof of the said Oscar Roth, his heirs and assigns, forever in fee simple.

And the said Eliza Wilson hereby covenants that she will warrant specially the property hereby intended to be conveyed, and that she will execute such further assurances thereof as may be requisite.

1485 Witness the hand and seal of the said grantor:

ELIZA WILSON. [SEAL.]

[Four 25 Cents U. S. I. R. Stamps, Cancelled.]

Attest:

MARK S. WILSON.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify that on this 29th day of December, in the year eighteen hundred and ninety nine, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County aforesaid, personally appeared Eliza Wilson and acknowledged the aforegoing deed to be her *respective* act.

JOHN H. RAFTER, *J. P.*

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify the above and foregoing to be a true copy taken from Liber E. Z. T., No. 38, folios 146 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court, at Oakland, this 7th day of September, 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Eliza Wilson To Oscar Roth. Certified Copy of Deed. Exhibit Brown No. 89. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1486 EXHIBIT BROWN No. 90.

At the request of Daniel W. Wilson this deed was recorded July 22nd 1905, at 1.30 o'clock p. m.

This Deed, made this 27th day of May, in the year one thousand nine hundred and five, by and between Eliza Wilson (widow) of Garrett County, in the State of Maryland, party of the first part, and Daniel W. Wilson of Garrett County, in the State of Maryland, party of the second part, Witnesseth:

That for and in consideration of the sum of Fifteen hundred and fifty two dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, the receipt whereof is hereby acknowledged, the said party of the first part has granted, bargained, and sold, and by these presents does hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns

All the surface of all that part of a tract of land called "Troas resurveyed," situate, lying and being in Garrett County and State of Maryland, contained within the following metes and bounds, courses and distances, towit: Beginning for the same at a white oak and cucumber trees, the latter now gone and the beginning of a tract of land called "West Point" and running thence, reversing the given and last line of said tract called "West Point," South 50° West, 284 perches; South 38′ West, 20 perches to the 3″ line of a tract of land called "Siege of Acre,"and reversing it, North 47° West, 147 perches to a post and stone pile on the "Michler Line," dividing the States of Maryland and West Virginia, (105 perches being the distance to the inner line of the vacancy included in the tract hereby conveyed), thence with said State line, North 337 perches to a corner of Oscar Roth's land; thence South 85°

1487 East, 97 perches to a corner of Sommers Mosser's land; thence South 41¾° East, 18 perches; North 69¾° East, 18½ perches; North 40¼° East, 21 1/10 perches; North 69¾° East, 26 perches; North 35° East, 14 perches; South 45° East, 25 perches; North 75° East, 15½ perches; North 55¾° East, 36 perches; North 29° East, 6 perches and three links; North 47° West, 33 perches; North 41½° East, 26½ perches to the aforesaid State line; thence South 34½° East, 306 perches to a stake and stone pile; thence North 47½° East, 16½ perches to a line of a tract of land called "Elk Garden," thence South 16½° East, 184 perches; North 30° West, 54 perches; North 39° West, 37 perches; North 9° East, 40 perches; North 72° West, 47 perches; South 5° West, 20 perches; South 50° West, 22 perches to the beginning, containing Seven hundred and seventy six acres, more or less.

Together with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the above granted surface of said land, with all and singular the appurtenances thereto, unto the said

Daniel W. Wilson, his heirs and assigns forever, the coal underlying said land, with the right to mine and remove the same, being excepted from the operation of this conveyance.

And the said party of the first part covenants that she will warrant specially the surface of the land hereby granted and conveyed, and that she will execute such other and further assurances of the same as may be requisite.

Witness my hand and seal the day and year first above written.

ELIZA WILSON. [SEAL.]

Witness:

WM. A. HARVEY.

1488 STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify that on this 27th day of May, in the year one thousand nine hundred and five, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County aforesaid, personally appeared Eliza Wilson, the above named Grantor, and acknowledge- the aforegoing deed to be her act.

WM. A. HARVEY, *J. P.*

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and aforegoing is a true copy taken from Liber E. Z. T., No. 50, folios 38 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 8th day of September, A. D., 1906.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Eliza Wilson To Daniel W. Wilson. Certified Copy of Deed. Exhibit Brown No. 90. Supreme Court U. S. No. 1 Original, Oct. Term 1907. Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1489 EXHIBIT BROWN No. 91.

Notley B. Browning. His Patent, "White Rock," 1180 a. 2 r. & 30 ps., Patented December 23rd, 1881.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye, that whereas Notley B. Browning of West Virginia had surveyed and laid out for him, a tract or parcel of land called "White Rock" lying in Garrett County, Maryland, and containing one thousand one hundred and eighty acres, two roods and thirty perches, by virtue of a Special Warrant for twenty-five acres, obtained by him from the Land Office of Maryland, bearing date the twenty-third

day of March, Eighteen hundred and seventy-four, as appears: And the said Notley B. Browning, having fully compounded for the said land, according to law:

The State of Maryland, doth therefore, hereby Grant and Confirm unto him, the said Notley B. Browning, the said tract or parcel of land called "White Rock," lying in Garrett County aforesaid

Beginning for the same at a stake and stone pile standing on the Virginia Line at a point North forty degrees East, five perches from the Bridge on Mud Run, and South, eighty-three degrees West, one hundred and fifty-one perches from a stake standing at the end of the fourth line of a tract of land called "Canrobert"; and running thence North, eighty-three degrees East, one hundred and fifty-one perches to the end of the aforesaid fourth line of said tract, and with the fifth line thereof North, eleven hundred and eighty perches to a stake; then North, seventy-seven degrees West, sixty-eight perches to a bounded double White Oak Tree; then North, thirty-seven degrees West, forty-six perches to a bounded Gum Tree; then
1490 South, seven degrees East, ninety perches; South, forty-one degrees West, forty and one fourth perches; south, seventy-seven degrees West, fifty-three perches to the Virginia Line; and with it South, one degree East, eleven hundred and twenty-two perches to the beginning.

Containing and now laid out for One thousand one hundred and eighty acres, two roods and thirty perches of Land, more or less, according to the Certificate of Survey thereof, taken and returned into the Land Office, bearing date the twenty-second day of July, Eighteen Hundred and seventy-four, and there remaining; Together with all rights, profits, benefits and privileges thereunto belonging. To Have To Hold the same unto him the said Notley B. Browning, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this twenty-third day of December, Eighteen hundred and eighty-one.

WILLIAM T. [THE GREAT SEAL.] HAMILTON.

LAND OFFICE OF MARYLAND.

I certify that the aforegoing Patent is proper to be issued.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland this twentieth day of December, Eighteen hundred and eighty-one.

[Land Office of Maryland.]

WM. R. HAYWARD,
Commissioner of the Land Office.

LAND OFFICE OF MARYLAND, *sct:*

I hereby Certify that the aforegoing is a true Copy of the
1491 Patent of "White Rock" 1180 a. 2 r. & 30 ps., as recorded in Liber W. R. H. No. 1 folio 445 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed

the Seal of the Land Office of Maryland, this third day of September nineteen hundred and six.

[SEAL.] E. STANLEY TOADVIN,
Commissioner of the Land Office.

Endorsed: Copy Notley B. Browning, his Patent, "White Rock" 1180 a. 2r. & 30 ps. Exhibit Brown No. 91. Supreme Court U. S. No. 1, Original, Oct. Term 1907 Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1492 EXHIBIT BROWN NO. 92

is a map of surveys made in this cause on behalf of the State of Maryland by W. McCulloh Brown, Surveyor, not reproduced by direction of counsel.

1493 EXHIBIT BROWN NO. 93.

THE STATE OF MARYLAND
v.
THE STATE OF WEST VIRGINIA.

In the Supreme Court of the United States. In Equity.

To the Honorable Chief Justice and Associate Justices of said Court:

Under and by virtue of an order of your Honorable Court, passed in the above entitled cause, and in pursuance of a stipulation entered into between Counsel for the respective parties thereto, bearing date the 11th. day of June, A. D. 1897, the undersigned, having been designated as Surveyor on the part of the State of Maryland, for the purpose of locating the claim and pretensions of the Plaintiff, respectfully returns unto your Honors, the following report:—

In the Supreme Court of the United States. In Equity.

THE STATE OF MARYLAND
v.
THE STATE OF WEST VIRGINIA.

To William McCulloh Brown, Esq., Surveyor on the part of the State of Maryland:

In making the locations in the above entitled cause on the part of the State of Maryland, under the stipulation of the 11th day of June, 1897, filed in the above entitled cause, you will proceed as follows, to-wit:

1st. Upon the day agreed on for the meeting of the Surveyors at Oakland, Maryland, you will appear at said place, and then
1494 proceed to the "Fairfax Stone."

2nd. Upon arriving at said point, you will run, by actual survey, a true North or Meridian line therefrom to the "Mason and

Dixon Line," being guided by the Manuel of Surveying Instructions for the Survey of the Public Lands of the United States, as prepared in conformity with law, under the direction of the Commissioner of the General Land Office of the General Government, making such astronomical observations on the ground as may be necessary and proper to secure the desired result.

3rd. You will adopt the latitude and longitude of "Fairfax Stone" as given in the report of Mr. Lee, Commissioner on the part of the State of Maryland, of the work of Lieut. N. Michler, performed in the year 1859.

4th. Should you find that the meridian line running North from "Fairfax Stone," to the "Mason and Dixon Line," crosses any of the waters of the Potomac river, you will locate, by actual survey, such water or waters, from the point where they are respectively crossed by said meridian, to their fountain heads.

5th. You will, upon ascertaining by actual survey the westernmost source or first fountain of the Potomac river, plant a stone or monument at said fountain to mark the same, and from thence you will locate by actual survey, a due North or meridian line to the "Mason and Dixon Line," and in order to secure the greatest degree of accuracy in said location, you will make such astronomical observations on the ground as may be necessary, being guided in your work by the Manual of Instructions above referred to.

6th. In locating such meridian from the first fountain of the Potomac river, you will take such notes and establish such
1495 monuments as may be necessary to definitely mark the same upon the ground, and you will likewise take such barometric readings as will enable you to show in your returns, the contour of the surface of the country through which said line runs.

7th. You will run such lines of levels as will give the actual difference in elevation between the spring at "Fairfax Stone," and the first fountain of the Potomac river, as ascertained by your previous work.

8th. The initial point of the meridian, from the first fountain of the Potomac river to the "Mason and Dixon Line," shall be taken as the base of your future work.

9th. You will determine the magnetic declination at the "Fairfax Stone" and at other points upon the meridian lines to be run by you to the "Mason and Dixon Line."

10th. You will further counter-locate the line located by the State of West Virginia in the year 1894, under a stipulation in this cause, by means of off-sets from said meridian lines.

11th. You will take references to points in other lines which witnesses, produced upon the ground, may point out and claim as being in an old line run prior to the year 1859, or as marking any supposed boundary between the States of Maryland and West Virginia.

12th. You will also locate, by actual survey, the beginnings and sufficient of the lines of certain original tracts of land, to-wit: "The Royal Charlotte," "The Promised Land," "Kindness," "Thomas and Ann," "The Diadem," "Elder Spring," "Cherry Hill" and "The

Granary," to reach the said meridian line or lines to be run by you; the said beginnings to be pointed out to you by witnesses to be produced upon the ground; and likewise, the beginning and the
1496 first line of each of Military Lots Nos. 316, 1237, 1463 and 2952; said tracts and lots to be located according to their original courses, distances and calls, as contained in the original patents and certificates for the same, duly certified copies of which patents and certificates will be furnished to you.

You will also locate, by actual survey, the beginnings and at least one line of each of the following tracts of land, to-wit:

The tract known as "The William Ashby 300 acre Tract," "The Hooker Tract," containing 2251 acres, and the "Williams Deakins Tract" containing 138 acres.

(Signed) EDWARD H. SINCELL,
Superintendent in Charge, for the Attorney General of Maryland.

In pursuance of the aforegoing instructions, I certify and return, that on the 2nd. day of August, 1897, I appeared at Oakland, Maryland, and in company with the Surveyor on the part of the State of West Virginia Edward H. Sincell, representing the Attorney General of Maryland, and a surveying corps, I proceeded to "Fairfax Stone."

The spot thus designated is now marked by a monument of cut stone, placed there in the year 1859 by Lieut. N. Michler, and in his report, said to have been placed directly south of an older monument, or rather, a slab of stone, marked "Ffx."

The monument was pointed out to me by William H. Kitzmiller, Sr., and George L. Mosser, witnesses, produced upon the ground on behalf of the State of Maryland, as the monument placed there by said Michler, and as being directly south of the older stone marked "Ffx."

The assistance of Dr. L. A. Bauer, of the Maryland Geo-
1497 logical Survey, and late of the United States Coast and Geodetic Survey, was procured for the astronomical and magnetic work, and while we were having a vista cut through the woods, which would enable a sight to be taken to the North, in meridian, by direction of Counsel for the State of Maryland, I ran a trial line, the direction of which was obtained from preliminary observations, in order to prove the fact, which was evidenced upon the ground, that a meridian, run north from "Fairfax Stone" would cut across the waters of the Potomac river.

This trial meridian was run North for 4020 feet, to the South or right hand bank of the river, where a hub and stake were placed. At this point the natural bed of the river was found by actual measurement to be 30 feet in width.

Having ascertained by actual survey that a meridian running North from "Fairfax Stone" did cross the Potomac river, by direction of Counsel for the State of Maryland, I proceeded to locate, by actual survey, the several branches and the fountains from whence they flowed.

I began said survey at the hub in the trial meridian above referred to, designating said hub as No. 0 and ran thence a transverse line

from station to station up the South or right hand bank of the river, as follows, to-wit:

1st. North 65° 45′ West, 34 feet,
2nd. South 33° West, 80 feet,
3rd. North 79° 20′ West, 169.3 feet,
4th. North 43° 18′ West, 62.4 feet,
5th. North 63° 38′ West, 220 feet,
6th. North 6° 49′ West, 149 feet,
7th. South 84° 34′ West, 72 feet,

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8th. South 67° 3′ West, 87 feet,
9th. South 20° 21′ East, 146.6 feet,
10th. South 28° 39′ West, 75.3 feet,
11th. South 64° 40′ West, 114.9 feet,
12th. South 8° 21′ West, 251.9 feet,
13th. South 43° 22′ West, 286 feet,
14th. North 79° 18′ West, 165 feet,
15th. South 28° 01′ West, 101.6 feet,
16th. South 74° 42′ West, 133.7 feet, to a small stream on the South,
17th. North 52° 49′ West, 132 feet,
18th. South 26° 24′ West, 54.3 feet,
19th. North 69° 43′ West, 133 feet,
20th. South 85° 50′ West, 105.2 feet, to a small stream on the South,
21st. South 45° 27′ West, 109.5 feet,
22nd. South 87° 33′ West, 246.5 feet,
23rd. South 12° 40′ West, 61.4 feet,
24th. South 81° 16′ West, 136.9 feet,
25th. South 53° 43′ West, 129.4 feet,
26th. North 65° 09′ West, 44 feet,
27th. South 70° 51′ West, 88 feet,
28th. South 31° 28′ East, 104 feet,
29th. South 73° 34′ West, 141.6 feet,
30th. North 61° 53′ West, 115.4 feet,
31st. South 78° 48′ West, 92.5 feet, to "The Forks," of the Potomac river, which point is shown upon the plats as "Station No. 31," and ran thence up the Southern or Fairfax branch of the Potomac river,
32nd. South 71° 01′ West, 122.5 feet,

1499

33rd. South 61° 30′ West, 217.7 feet,
34th. South 12° 45′ West, 117.2 feet,
35th. South 39° 24′ West, 150.2 feet,
36th. South 28° 37′ West, 121 feet,
37th. South 4° 02′ West, 233.7 feet,
38th. South 75° 14′ West, 82 feet,
39th. South 27° 51′ West, 116.6 feet,
40th. South 36° 16′ East, 160.7 feet,
41st. South 5′ 23′ East, 103.6 feet,
42nd. South 25° 37′ West, 132.3 feet,

43rd. South 1° 13′ West, 161.5 feet,
44th. South 54° 08′ West, 93.7 feet,
45th. South 4° 02′ East, 150 feet,
46th. South 22° 24′ East, 151 feet,
47th. South 7° 08′ West, 58.9 feet,
48th. South 43° 41′ East, 96 feet,
49th. South 1° 24′ West, 99.4 feet,
50th. South 81° 20′ East, 107 feet,
51st. South 49° 43′ East, 162.3 feet,
52nd. South 15° 52′ East, 153.7 feet,
53rd. South 7° 29′ East, 102.5 feet,
54th. South 2° 22′ West, 91.8 feet,
55th. South 63° 46′ East, 178.3 feet,
56th. South 46° 11′ East, 90.4 feet, to a small stream on the North,
57th. South 27° 17′ East, 95.3 feet,
58th. South 45° 04′ East, 121 feet,
59th. North 34° 58′ East, 132 feet; At the end of 40 feet on this line, a small stream enters on the right.

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60th. North 75° 03′ East, 135.6 feet,
61st. South 39° 36′ East, 126.8 feet,
62nd. South 80° 34′ East, 77 feet,
63rd. North 48° 12′ East, 85.8 feet,
64th. South 86° 38′ East, 149.2 feet,
65th. South 56° 25′ East, 221.2 feet, to a small stream on the left,
66th. South 84° 32′ East, 291.4 feet,
67th. South 61° 07′ East, 68 feet,
68th. South 82° 29′ East, 50 feet,
69th. North 25° 25′ East, 98.6 feet,
70th. South 69° 21′ East, 161.8 feet,
71st. North 89° 17′ East, 231 feet,
72nd. South 72° 01′ East, 93 feet,
73rd. South 78° 06′ East, 227 feet,
74th. South 60° 55′ East, 93 feet,
75th. North 70° 15′ East, 159 feet,
76th. North 82° 47′ East, 171 feet; At the end of 105 feet on this line a strong spring to the left, at a distance of 15 feet, and in all a distance of 5975.7 feet from "Station No. 31."
77th. North 45° 19′ East, 49.7 feet,
78th. South 77° 18′ East, 115.4 feet,
79th. South 29° 29′ East, 98 feet,
80th. South 47° 16′ East, 114 feet, to the *"The Fairfax Stone."* In all, 6418.8 feet from "Station No. 31."

I then by direction of Counsel for the State of Maryland,
1501 located, by actual survey, three small springs from the "Fairfax Stone," viz:

1st. Spring, North 61° 34′ East, 30 feet, from "Fairfax Stone."
2nd. Spring, South 15° 14′ West, 34 feet, from "Fairfax Stone."
3rd. Spring, South 42° 22′ West, 55 feet, from "Fairfax Stone."

It will thus be seen that I ran due North from "Fairfax Stone" a distance of 4020 feet, to the South bank of the river, where it is 30 feet wide between banks, and then ran from this point up the stream in a semi-circle, curving to the left, until finally, the stream turned East, to the point of beginning at "Fairfax Stone." For all of this distance, the stream is to the West of "Fairfax'" meridian, and in some places, more than a half a mile West. I thus proved that some spring, other than those at "Fairfax Stone," was the most Westerly source of the Potomac river.

The said stream is shown upon the plats by solid blue lines from "Station No. 31" to "Fairfax Stone," and is designated as "Fairfax Run."

I then, by direction of Counsel for the State of Maryland, returned to "Station No. 31," as above located, and ran, by actual survey, the Northern branch of the Potomac river, the location of which was made by running up the Southern or right hand bank thereof, as designated from its source, in order to locate and determine the most Western source, or "First Fountain" of the Potomac river. I began said survey at "Station No. 31," shown upon the plats, and ran thence,

32nd. North 38° 06′ West, 84 feet,
33rd. North 8° 33′ West, 69 feet,
34th. North 81° 12′ West, 94 feet,

1502

35th. South 27° 08′ West, 48 feet,
36th. North 64° 32′ West, 67.9 feet,
37th. North 37° 55′ West, 184 feet,
38th. North 61° 55′ West, 115.1 feet
39th. South 86° 33′ West, 69.7 feet
40th. North 47° 05′ West, 59 feet. At the end of 50 feet on this line a small stream enters on the South.
41st. North 38° 13′ West, 61 feet,
42nd. North 57° 41′ West, 116 feet, to a fork in the stream. I continued the survey up the Northerly branch, it being the larger stream, thence,
43rd. North 14° 56′ East, 28.2 feet,
44th. North 20° 32′ West, 98.1 feet,
45th. North 41° 38′ West, 105.5 feet,
46th. North 72° 25′ West, 102.7 feet,
47th. North 4° 48′ West, 62.8 feet,
48th. North 36° 35′ West, 114 feet,
49th. North 4° 12′ East, 69 feet,
50th. North 48° 21′ West, 162.8 feet,
51st. North 4° 38′ East, 254.6 feet,
52nd. North 51° 06′ West, 54.2 feet,
53rd. North 85° 49′ West, 47 feet,
54th. North 12° 28′ East, 69.4 feet,
55th. North 17° 24′ West, 110.6 feet,
56th. North 24° 01′ East, 88.4 feet,
57th. North 5° 08′ West, 141 feet,

1503

58th. North 19° 32′ East, 140 feet,
59th. North 29° 48′ West, 160.7 feet,
60th. North 29° 30′ West, 65 feet,
61st. North 4° 18′ West, 92 feet,
62nd. North 13° 21′ West, 145.4 feet,
63rd. North 36° 21′ West, 73.1 feet,
64th. North 11° 51′ East, 82.6 feet,
65th. North 62° 06′ West, 58.3 feet,
66th. North 19° 28′ West, 39 feet,
67th. North 17° 49′ East, 70 feet,
68th. North 54° 47′ West, 76.7 feet,
69th. North 38° 10′ West, 175 feet,
70th. North 20° 26′ West, 136 feet,
71st. North 13° 48′ East, 153.3 feet,
72nd. North 1° 13′ West, 159.3 feet,
73rd. North 34° 12′ West, 144.4 feet,
74th. North 19° 19′ West, 171.6 feet,
75th. North 35° 08′ West, 60.2 feet to a fork in the stream. I continued the survey up the Westerly branch of the stream. This station is designated as "Station No. 75" on the plats. Thence,
76th. North 79° 56′ West, 66.2 feet,
77th. North 72° 25′ West, 58 feet,
78th. North 53° 26′ West, 65 feet,
79th. South 75° 49′ West, 83.4 feet,
80th. North 58° 07′ West, 117 feet,

1504

81st. South 78° 43′ West, 149.4 feet, at which point a small stream enters on the East side, and said point is designated on the plats as "Station No. 81," thence,
82nd. North 54° 30′ West, 78 feet,
83rd. North 64° 51′ West, 170.8 feet,
84th. North 89° 48′ West, 27.3 feet,
85th. North 38° 22′ West, 50 feet,
86th. North 72° 59′ West, 48.6 feet,
87th. North 44° 55′ West, 52.3 feet,
88th. North 81° 57′ West, 69.1 feet,
89th. South 89° 14′ West, 78.5 feet,
90th. North 61° 54′ West, 77.5 feet,
91st. South 66° 02′ West, 79 feet,
92nd. North 67° 54′ West, 95.4 feet,
93rd. South 78° 19′ West, 120.6 feet,
94th. South 66° 22′ West, 135.3 feet. From this point I located a strong spring, South 45° 38′ West, 90 feet, and the end of said 94th line is designated upon the plats as "Station No. 94," thence,
95th. North 53° 37′ West, 113.4 feet,

96th. North 61° 40′ West, 134 feet. At the end of 87 feet on this line is a spring, 10 feet to the left, and at the end of 110 feet is a spring 15 feet to the left, thence,

1505

97th. North 54° 07′ West, 130 feet, to "THE FIRST FOUNTAIN OF THE POTOMAC RIVER," and at a distance of 6477.7 feet from the "Forks," at "Station No. 31," on the plats. At the end of 27 feet on this line is a spring, 10 feet to the left.

By direction of counsel for the State of Maryland, I then returned to "Station No. 75," shown upon the plats, and located, by actual survey, the stream entering the Northern branch of the Potomac river at said point.

I began the survey of said stream at said "Station No. 75," and ran thence,

76th. North 9′ 21′ West, 34.8 feet,
77th. North 48° 17′ West, 58 feet,
78th. North 28° 34′ West, 111.5 feet,
79th. North 63° 43′ West, 55.7 feet,
80th. North 46° 04′ West, 56.8 feet; at a distance of 10 feet to the right of this point is a spring.
81st. North 85° 13′ West, 66.2 feet,
82d. North 43° 41′ West, 111 feet,
83rd. North 60° 10′ West, 77.3 feet,
84th. North 20° 47′ West, 76 feet,
85th. North 4° 27′ West, 75.9 feet.
86th. North 26° 07′ East, 44 feet,
87th. North 9° 38′ West, 83 feet,
88th. North 25° 30′ East, 122 feet,

1506

89th. North 41° 29′ East, 28.4 feet,
90th. North 12° 29′ East, 93 feet,
91st. North 10° 33′ West, 48.6 feet,
92nd. North 13° 16′ East, 44.2 feet, to the head spring of this stream.

I then by direction of Counsel for the State of Maryland, returned to "Station No. 81," on the Northern branch of the Potomac river, and located, by actual survey, the stream which enters at said point from the East.

I began the survey of said stream at "Station No. 81," and ran thence,

82nd. North 23° 32′ West, 91.5 feet,
83rd. North 48° 02′ West, 155 feet,
84th. North 61° 19′ West, 93 feet,
85th. North 14° 22′ West, 28.2 feet,
86th. North 73° 43′ West, 63.3 feet.
87th. North 40° 23′ West, 180 feet; at the end of 80 feet on this line is a large iron spring, three feet to the left; thence,
88th. North 23° 33′ West, 95 feet,

89th. North 85° 57′ West, 187 feet,
90th. North 58° 49′ West, 90 feet,
91st. North 72° 37′ West, 58 feet,
92nd. North 39° 20′ West, 96.2 feet,
93rd. North 6° 03′ West, 199.8 feet,
94th. North 56° 57′ East, 50 feet, to the head spring of said stream.

I then, by direction of Counsel for the State of Maryland, returned to "Station No. 94," on the Northern branch of the Potomac river, and located by actual survey a stream which enters from the
1507 East at said point.

I began the survey of said stream at "Station No. 94" and ran thence,

95th. North 23° 48′ West, 121.7 feet,
96th. North 51° 58′ West, 147 feet, to "Station No. 96" and from said point, I located four springs, as follows:
1st. Spring, North 81° 07′ West, 134.4 feet.
2nd. Spring, North 44° 48′ West, 98 feet.
3rd. Spring, North 32° 53′ West, 99 feet.
4th. Spring, North 7° 36′ West, 181 feet, and which said springs constitute the head fountains of said stream.

I then by direction of Counsel for the State of Maryland, determined from the above locations and the data thereon, that the "First Fountain of the Potomac River" as above located and designated, is, by latitude and departure thus obtained, 7220.99 feet North, and 5978.56 feet West of the "Fairfax Stone," and also that no other spring or fountain of said river is so far west.

I then, by direction of Counsel for the State of Maryland, planted a large square rock, 12 x 12 inches, and 3½ feet long, projecting 4 inches above the surface of the ground, precisely 11 feet due North of the waters of the "First Fountain of the Potomac River," the stone being so planted because the spring is in a small ravine.

I also planted near said stone a flat slab 3 x 20 inches 3½ feet long, upon which was cut the word and figures, "Potomac, 1897."

1508 The "First Fountain of the Potomac River" is designated upon the plats by the words "Potomac Stone," and the Northern branch of the Potomac river as above located and returned, is shown upon the plats by solid blue lines from mouth of Laurel run to "Station O" and from thence to "Potomac Stone" and is designated "Potomac river;" the other streams flowing into it are shown upon the plats by solid blue lines.

I further certify and return, that the "First Fountain of the Potomac River," shown upon the plats at "Potomac Stone" is within a short distance of the top of the Backbone or Great Savage Mountain, and that upon the opposite or west face of the mountain is a spring, one of the fountain heads of "Lead Mine Run," a tributary of the Cheat river, flowing in a westerly course, and that by direction of Counsel for the State of Maryland, I located, by actual survey, the said spring, and a portion of the stream issuing therefrom, in order to illustrate its course, as follows, to wit:

I began said location at "Potomac Spring," and ran thence,
1st. North 54° 07′ West, 5.3 feet,
2nd. North 76° 21′ West, 296 feet, to the top of the Backbone mountain, said point being shown upon the plats by the word, "Backbone," thence,
3rd. South 75° 55′ West, 159 feet,
4th. South 86° 21′ West, 91 feet, to the head spring of "Lead Mine Run," thence down said run,
5th. North 54° 24′ West, 150 feet.
Said spring and stream are shown upon the plats by the words "Lead Mine Run."

1509 Potomac River from Mouth of Laurel Run Below Town of Dobbin to Meridian North from Fairfax Stone.

I further certify and return that by direction of Counsel for the State of Maryland, I have carefully located and laid down by actual survey, the Potomac river from the mouth of Laurel run to the Meridian run North from the Fairfax Stone, and to Station No. 1, thus connecting with the lines previously run from the said Meridian to the Fairfax Stone and Potomac Spring.
I began said survey at a solid rock, marked with a cross and circle, and the letters "W. A. S." upon the right or southern bank of the river, and near two birch trees, marked with four notches each, as pointers, and a short distance below the town of Dobbin, and ran thence (assuming the course of the first line to be its magnetic bearing, which was South 89° West,) by means of angles laid off to the right and left, from which the true course was calculated to Station No. 1 upon the line as run up the river in August, 1897; it was found at this point that the calculated courses, as just run, would require a correction of 4° 57′ (to be added to N. W. and S. E. courses, and to be subtracted from N. E. and S. W. courses), to bring them into the same relation or angle with the Meridian from Fairfax Stone, as the lines previously run from Station No. 1 and the courses which follow are those as actually run, with the correction of 4° 57′ allowed:

1st. South 84° 13′ West 60.3 feet,
2nd. South 61° 56′ West, 67 feet,

1510

3rd. South 34° 29′ West, 63 feet,
4th. South 9° 50′ West, 91.9 feet,
5th. South 31° 00′ East, 75 feet,
6th. South 89° 39′ East, 92 feet,
7th. South 84° 56′ East, 136.2 feet,
8th. South 44° 37′ East, 151 feet,
9th. South 21° 41′ West, 161.7 feet,
10th. South 32° 55′ West, 254.5 feet,
11th. South 17° 28′ West, 138.3 feet, to a rock marked with a cross and circle, just below the falls in the river, thence

12th. South 11° 28′ West, 315 feet; at the end of 187.5 feet on this line we marked a cross and circle on the rock forming the falls of the river, thence,
13th. South 19° 35′ West, 190.4 feet,
14th. South 50° 08′ West, 287.7 feet,
15th. South 40° 29′ West, 230.2 feet,
16th. South 65° 45′ West, 341.2 feet,
17th. South 24° 23′ West, 180 feet,
18th. South 12° 32′ East, 247.5 feet,
19th. South 27° 43′ West, 90.4 feet,
20th. South 76° 57′ West, 242 feet,
21st. North 63° 18′ West, 336.5 feet,
22nd. South 78° 23′ West, 104.2 feet,
23rd. South 47° 47′ West, 97 feet,
24th. South 19° 35′ West, 206.6 feet,

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25th. North 89° 11′ West, 311 feet,
26th. North 85° 03′ West, 166.7 feet,
27th. North 82° 01′ West, 461 feet,
28th. South 56° 46′ West, 175 feet,
29th. South 33° 31′ West, 154.5 feet,
30th. South 38° 23′ West, 712.5 feet,
31st. South 8° 27′ East, 187.9 feet,
32nd. South 20° 39′ East, 222.1 feet,
33rd. South 8° 54′ West, 310.8 feet,
34th. South 39° 06′ West, 133 feet,
35th. South 62° 58′ West, 358 feet,
36th. South 39° 39′ West, 231 feet,
37th. South 80° 45′ West, 208.7 feet,
38th. South 60° 44′ West, 268.2 feet,
39th. North 62° 23′ West, 149.6 feet,
40th. North 40° 00′ West, 81.7 feet,
41st. North 10° 29′ West, 109.9 feet,
42nd. South 89° 15′ West, 69.7 feet,
43rd. South 35° 26′ West, 146.7 feet,
44th. South 00° 42′ West, 94 feet,
45th. South 18° 31′ East, 383.3 feet,
46th. South 31° 28′ East, 178.3 feet,
47th. South 11° 58′ East, 246.7 feet,
48th. South 2° 15′ West, 323.3 feet,
49th. South 9° 57′ East, 375 feet,
50th. South 11° 04′ West, 249.2 feet,
51st. South 05° 24′ West, 368.2 feet,
52nd. South 34° 52′ East, 367.3 feet,

1512

53. South 02° 52′ West, 130.3 feet,
54th. South 39° 39′ West, 234 feet,
55th. South 61° 06′ West, 238.3 feet,
56th. South 34° 05′ West, 150.7 feet,

57th. South 15° 04′ West, 241 feet, to the mouth of Elk run, entering the River on the South side, thence,
58th. South 44° 30′ West, 235 feet,
59th. North 83° 22′ West, 81.5 feet,
60th. South 88° 13′ West, 231.8 feet,
61st. South 61° 10′ West, 89 feet,
62nd. South 55° 16′ West, 118.5 feet,
63rd. South 41° 36′ West, 121 feet,
64th. South 17° 44′ West, 139.1 feet,
65th. South 45° 58′ West, 229 feet, to the mouth of Deakin's run, entering the River on the South side, thence,
66th. South 68° 38′ West, 143.6 feet,
67th. South 58° 40′ West, 221 feet,
68th. North 73° 33′ West, 79.3 feet,
69th. North 3° 52′ East, 268.5 feet,
70th. North 27° 21′ West, 187.3 feet,
71st. North 54° 33′ West, 56 feet,
72nd. North 86° 21′ West, 52 feet,
73rd. South 75° 04′ West, 200.3 feet,
74th. South 64° 50′ West, 304.3 feet,
75th. South 37° 42′ West, 112.2 feet,
76th. South 35° 40′ West, 688.5 feet,

1513

77th. South 47° 04′ West, 161.5 feet,
78th. South 28° 16′ West, 601.8 feet,
79th. South 21° 29′ West, 472.9 feet,
80th. South 62° 09′ West, 120.3 feet,
81st. South 57° 34′ West, 191.5 feet,
82nd. South 9° 52′ West, 222 feet,
83rd. North 71° 07′ West, 261.5 feet,
84th. South 20° 27′ West, 360 feet,
85th. South 46° 07′ West, 238.9 feet,
86th. South 26° 13′ West, 226.5 feet,
87th. South 57° 40′ West, 295 feet,
88th. North 40° 54′ West, 276 feet,
89th. North 56° 09′ West, 80 feet,
90th. South 11° 49′ West, 278.5 feet, to a point opposite the "Big Elk Lick," on the North side of the River,
91st. North 79° 49′ West, 353 feet,
92nd. North 72° 41′ West, 194.2 feet,
93rd. South 78° 39′ West, 212 feet,
94th. South 69° 03′ West, 210.2 feet,
95th. South 62° 38′ West, 123.5 feet,
96th. South 44° 34′ West, 205 feet,
97th. South 79° 35′ West, 239.3 feet,
98th. South 66° 13′ West, 230.5 feet,
99th. South 38° 28′ West, 94 feet,
100th. South 23° 05′ West, 383 feet,
101st. South 73° 14′ West, 222 feet,
102nd. South 56° 42′ West, 122.8 feet,

1514

103rd. North 89° 02′ West, 104.2 feet,
104th. South 49° 55′ West, 96.4 feet,
105th. South 77° 26′ West, 135.5 feet,
106th. South 20° 00′ East, 161.3 feet,
107th. South 29° 37′ West, 82.2 feet,
108th. South 14° 17′ West, 204.6 feet,
109th. North 81° 59′ West, 109.9 feet,
110th. North 41° 15′ West, 93.2 feet,
111th. South 37° 08′ West, 136 feet,
112th. South 46° 24′ West, 81 feet,
113th. North 65° 08′ West, 104.6 feet,
114th. South 4° 16′ East, 106.5 feet,
115th. South 25° 48′ East, 76 feet,
116th. South 18° 22′ West, 62.8 feet,
117th. South 87° 52′ West, 110.5 feet,
118th. South 44° 08′ West, 254.2 feet,
119th. South 42° 07′ East, 48.5 feet,
120th. North 81° 14′ East, 150 feet,
121st. South 6° 21′ West, 264.5 feet, to the mouth of Levering's run entering the river on the south side, thence,
122nd. South 55° 14′ West, 254.7 feet,
123rd. North 64° 14′ West, 113 feet,
124th. South 60° 59′ West, 127 feet,
125th. North 85° 06′ West, 231.5 feet,
126th. South 42° 17′ West, 90 feet,
127th. North 86° 48′ West, 68 feet,
128th. North 19° 14′ East, 100 feet,

1515

129th. North 28° 43′ West, 80.8 feet,
130th. North 18° 36′ East, 103.5 feet,
131st. North 65° 11′ West, 172.5 feet,
132nd. South 44° 46′ West, 110.4 feet,
133rd. North 55° 06′ West, 96 feet,
134th. South 74° 19′ West, 104.5 feet,
135th. South 36° 54′ West, 91 feet,
136th. North 58° 51′ West, 51.4 feet,
137th. North 8° 33′ East, 103.7 feet,
138th. North 37° 41′ West, 68.5 feet,
139th. South 31° 31′ West, 125.6 feet,
140th. North 77° 03′ West, 45.6 feet,
141st. North 4° 09′ East, 81.6 feet,
142nd. North 56° 10′ West, 111.8 feet,
143rd. South 57° 43′ West, 95.5 feet,
144th. North 46° 48′ West, 158 feet,
145th. South 58° 54′ West, 117.1 feet,
146th. South 80° 06′ West, 303.1 feet,
147th. North 31° 16′ West, 96.7 feet,
148th. South 34° 28′ West, 60 feet,
149th. North 75° 00′ West, 104.7 feet,

150th. South 31° 45′ West, 93 feet,
151st. North 62° 49′ West, 95.4 feet,
152nd. South 48° 05′ West, 286.2 feet,
153rd. North 69° 40′ West, 64.4 feet,
154th. South 66° 04′ West, 121.2 feet,
155th. North 74° 01′ West, 74.2 feet,
156th. South 19° 50′ West, 106.4 feet,

1516

157th. South 41° 33′ West, 155.8 feet,
158th. North 32° 48′ West, 81 feet,
159th. South 87° 32′ West, 106.5 feet,
160th. South 37° 02′ West, 365 feet,
161st. North 77° 30′ West, 79.4 feet,
162nd. South 66° 48′ West, 194 feet,
163rd. South 7° 10′ West, 50.9 feet,
164th. South 43° 07′ West, 108.4 feet,
165th. South 54° 41′ West, 129.3 feet,
166th. North 23° 43′ West 91.8 feet,
167th. South 29° 37′ West, 139.6 feet,
168th. South 79° 14′ West, 107.2 feet,
169th. North 71° 34′ West, 114.6 feet,
170th. South 82° 51′ West, 60.4 feet,
171st. South 24° 23′ West, 140.8 feet,
172nd. South 15° 57′ East, 97.9 feet,
173rd. South 34° 35′ West, 192.8 feet,
174th. South 57° 34′ West, 137.6 feet,
175th. North 80° 10′ West, 113.7 feet,
176th. South 48° 50′ West, 107 feet,
177th. South 74° 01′ West, 135.1 feet; at the end of 53 feet on this line, a small run enters the River on the left; thence,
178th. South 10° 38′ West, 80.2 feet,
179th. South 50° 01′ East, 90.2 feet,
180th. South 77° 57′ East, 111.3 feet,
181st. South 34° 58′ East, 21.4 feet,
182nd. South 10° 32′ East, 106.7 feet,

1517

183rd. South 36° 43′ West, 213.7 feet,
184th. South 41° 50′ East, 87.1 feet,
185th. South 23° 58′ West, 248.8 feet,
186th. South 3° 47′ West, 171.8 feet,
187th. South 27° 50′ West, 101 feet,
188th. North 50° 52′ West, 139 feet,
189th. South 51° 52′ West, 39.6 feet,
190th. South 37° 37′ East, 166.4 feet,
191st. South 10° 02′ West, 164.4 feet,
192nd. North 78° 01′ West, 109.7 feet,
193rd. South 32° 28′ West, 116.7 feet,
194th. South 19° 03′ West, 126.7 feet,
195th. South 83° 48′ West, 65.8 feet,

196th. North 28° 09′ West, 115.3 feet,
197th. South 50° 56′ West, 100.8 feet,
198th. South 80° 02′ West, 125.7 feet,
199th. North 70° 47′ West, 98 feet,
200th. South 69° 03′ West, 124.2 feet,
201st. South 23° 41′ West, 75.9 feet,
202nd. North 72° 05′ East, 67.7 feet,
203rd. South 34° 37′ East, 73.7 feet,
204th. South 19° 16′ West, 63.3 feet,
205th. South 76° 01′ West, 130.2 feet,
206th. South 1° 56′ West, 68.9 feet,
207th. North 80° 32′ East, 126.1 feet,
208th. South 12° 14′ East, 56.3 feet,
209th. South 14° 48′ West, 143.1 feet,
210th. North 74° 13′ West, 61.8 feet,

1518

211th. South 18° 15′ West, 70.8 feet, to a stake marked Nov. 10th, 1899, at the Mouth of the South prong of the River, entering *on* the South side, thence,
212th. South 85° 18′ West, 78.7 feet,
213th. North 12° 00′ East, 108.7 feet,
214th. South 64° 36′ West, 97.4 feet,
215th. North 62° 05′ West, 40.3 feet,
216th. North 3° 55′ West, 74.7 feet,
217th. South 75° 30′ West, 115.4 feet,
218th. North 63° 14′ West, 33.5 feet,
219th. North 3° 25′ East, 74.7 feet,
220th. South 70° 03′ West, 104 feet,
221st. North 6° 23′ West, 76.5 feet,
222nd. South 72° 08′ West, 79 feet,
223rd. North 49° 11′ West, 26.9 feet,
224th. North 2° 46′ East, 68 feet,
225th. North 80° 54′ West 112 feet,
226th. North 46° 58′ West, 78.7 feet,
227th. North 9° 53′ East, 118.2 feet,
228th. South 75° 51′ West, 37.4 feet,
229th. North 32° 58′ West, 77.7 feet,
230th. South 57° 01′ West, 80.3 feet,
231st. North 61° 54′ West, 35.6 feet,
232nd. North 7° 01′ West, 41.7 feet,
233rd. North 62° 15′ West, 284 feet,
234th. North 84° 09′ West, 204.3 feet,
235th. North 42° 41′ West, 94.4 feet,

1519

236th. South 41° 07′ West, 149.7 feet,
237th. North 66° 00′ West, 117.9 feet; at the end of 53.3 feet on this line, a small run enters the River on the South side; thence,
238th. North 50° 50′ West, 108 feet,

239th. North 18° 48′ West, 119 feet,
240th. North 88° 18′ West, 52.7 feet,
241st. South 15° 55′ West, 69.2 feet,
242nd. South 87° 40′ West, 44.8 feet,
243rd. North 16° 51′ West, 110.2 feet,
244th. South 85° 29′ West, 25.3 feet,
245th. South 6° 45′ West, 54.9 feet,
246th. South 55° 15′ West, 140 feet,
247th. North 40° 59′ West, 51.7 feet,
248th. South 79° 27′ West, 62 feet,
249th. North 67° 41′ West, 75.4 feet,
250th. South 83° 33′ West, 113.8 feet,
251st. North 52° 18′ West, 97 feet,
252nd. North 40° 37′ East, 123 feet,
253rd. North 70° 31′ West, 82.2 feet,
254th. South 57° 15′ West, 79.4 feet,
255th. North 60° 27′ West, 169 feet,
256th. South 86° 49′ West, 97.2 feet,
257th. North 25° 03′ West, 162 feet,
258th. South 70° 02′ West, 66 feet,
259th. South 2° 04′ West, 74 feet,
260th. South 73° 16′ West, 133.1 feet,

1520

261st. North 62° 03′ West, 105.8 feet,
262nd. North 0° 21′ East, 136 feet,
263rd. North 50° 18′ West, 76 feet,
264th. South 55° 55′ West, 143.3 feet,
265th. North 65° 26′ West, 73.4 feet,
266th. North 83° 30′ West, 63 feet,
267th. North 35° 26′ West, 67.8 feet,
268th. North 71° 49′ West, 106 feet,
269th. South 82° 02′ West, 234.5 feet,
270th. South 65° 53′ West, 179 feet,
271st. North 18° 48′ West, 100.5 feet,
272nd. North 62° 23′ West, 171.6 feet,
273rd. North 67° 22′ West, 107.8 feet, to stake marked No. 1, set on the 7th day of August, 1897, on the South or right hand bank of the Potomac River, and at the end of the 1st course of the lines then run from the Bauer-Michler Meridian, up said River to the Fairfax and Potomac springs, respectively.

NOTE.—The courses and distances from the last named point are given above in these returns, and show the course of the River from thence to the Fairfax and Potomac springs.

Laurel Run.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully located and laid down,
1521 by actual survey, Laurel Run, which is one of the principal tributaries of the upper Potomac River, heading upon the

Backbone mountain a short distance East and North of "Potomac Spring," and at a point West of the meridian drawn North from Fairfax Stone; the elevation of the head fountain of Laurel run was ascertained by a line of actual levels, incorporated in this return.

I began the location of said Laurel run at its head fountain, which is a strong spring, coming from under large sandstone rocks, at the base of a spruce pine tree, which point is designated upon the plats at "L. R.," and ran thence, down the centre of said run, with an allowance of 3° 10′ to the Right for declination, so as to bring the courses upon the ground and on the plats as nearly as possible into their true relation with the Meridians.

1st. South 81° 10′ East, 27 feet,
2nd. South 41° 22′ East, 35 feet,
3rd. South 59° 30′ East, 144.6 feet,
4th. South 45° 30′ East, 44 feet,
5th. South 29° 50′ West, 83 feet,
6th. South 48° 38′ East, 79.2 feet,
7th. South 4° 05′ East, 44.6 feet,
8th. South 24° 08′ East, 49.5 feet,
9th. South 11° 18′ West, 44 feet,
10th. South 45° 35′ East, 69.5 feet,
11th. South 21° 07′ East, 49 feet,
12th. South 58° 25′ East, 55 feet,
13th. South 56° 00′ East, 113.8 feet,
14th. South 66° 15′ East, 97.8 feet,
15th. South 46° 20′ East, 51.5 feet.

1522

16th. South 64° 00′ East, 106.8 feet,
17th. South 44° 45′ East, 105.5 feet,
18th. North 84° 18′ East, 29 feet,
19th. South 57° 08′ East, 93 feet,
20th. North 25° 08′ East 92.5 feet,
21st. North 64° 35′ East, 49.5 feet,
22nd. North 75° 48′ East, 55 feet,
23rd. South 45° 40′ East, 39 feet,
24th. South 63° 40′ East, 55.8 feet,
25th. North 53° 02′ East, 31.2 feet,
26th. North 83° 08′ East, 57 feet,
27th. North 49° 00′ East, 28 feet,
28th. South 69° 22′ East, 42.5 feet,
29th. South 72° 38′ East, 30 feet,
30th. North 79° 45′ East, 76 feet,
31st. South 55° 00′ East, 58 feet
32nd. North 74° 00′ East, 45 feet,
33rd. South 66° 55′ East, 33.6 feet, to centre of Arnold road, thence
34th. North 80° 18′ East, 86 feet,
35th. North 47° 15′ East, 134 feet,
36th. North 16° 25′ East, 64.7 feet,
37th. North 45° 18′ East, 83.4 feet,
38th. North 15° 15′ East, 72.5 feet,

39th. North 22° 42′ East, 70 feet,
40th. North 6° 10′ West, 30 feet,
41st. North 35° 21′ East, 82.6 feet,
42nd. North 16° 30′ West, 92 feet,
1523
43rd. North 44° 38′ East, 87 feet,
44th. North 37° 53′ East, 77.4 feet,
45th. North 79° 58′ East, 145.4 feet,
46th. North 15° 40′ East, 107 feet,
47th. North 4° 38′ West, 51.5 feet,
48th. North 37° 22′ East, 86.7 feet,
49th. North 58° 03′ East, 77 feet,
50th. North 65° 54′ East, 68.7 feet,
51st. North 32° 40′ East, 73 feet,
52nd. North 67° 30′ East, 35.8 feet,
53rd. South 81° 00′ East, 93.6 feet,
54th. South 68° 43′ East, 80 feet,
55th. North 70° 50′ East, 163.5 feet,
56th. North 60° 22′ East, 99.3 feet,
57th. North 66° 40′ East, 105 feet,
58th. North 82° 50′ East, 102.8 feet,
59th. South 80° 20′ East, 193 feet,
60th. North 79° 40′ East, 90 feet,
61st. South 81° 25′ East, 137.2 feet,
62nd. North 85° 05′ East, 101.5 feet,
63rd. North 80° 50′ East, 80 feet,
64th. North 80° 50′ East, 76 feet,
65th. North 40° 22′ East, 49.3 feet,
66th. North 10° 35′ East, 95 feet,
67th. North 6° 45′ East, 38.5 feet,
68th. North 30° 15′ East, 62 feet,
69th. North 44° 22′ East, 54.5 feet,
70th. North 51° 15′ East, 42 feet,
1524
71st. North 35° 30′ East, 42.3 feet,
72nd. North 79° 00′ East, 36.7 feet,
73rd. North 1° 53′ East, 67.6 feet,
74th. North 43° 50′ West, 75.5 feet,
75th. North 46° 15′ East, 38 feet,
76th. North 87° 00′ East, 119/6 feet,
77th. North 53° 30′ East, 35 feet,
78th. South 77° 00′ East, 101.2 feet,
79th. South 59° 50′ East, 28 feet; At the end of 22.8 feet on this line crossed the Meridian North from the Fairfax Stone, which point is shown upon the plats at "Station No. 87," thence,
80th. North 78° 37′ East, 35.4 feet,
81st. North 56.32′ East, 58 feet,
82nd. North 77° 05′ East, 101.7 feet,
83rd. South 63° 38′ East, 63.5 feet,

84th. South 80° 32′ East, 77.7 feet,
85th. South 81° 58′ East, 93 feet, to a branch of Laurel Run, entering on the right, which point is shown upon the plats at "Station No. 86," and I then ran from the junction of the streams up said branch, by the courses and distances, following, to-wit:
(*a*) South 4° 25′ West, 64.7 feet,
(*b*) South 83° 20′ West, 87 feet,
(*c*) South 69° 50′ West, 61 feet,
(*d*) South 7° 08′ East, 100 feet,

1525

(*e*) South 81° 47′ East, 111.5 feet,
(*f*) South 66° 22′ West, 164 feet,
(*g*) South 68° 45′ West, 50 feet,

I then returned to said "Station No. 86," and continued down said Laurel Run, by actual survey, according to the following courses and distances, to wit:

86th. North 42° 52′ East, 71.8 feet,
87th. North 59° 27′ East 136.4 feet,
88th. South 41° 38′ East, 77.1 feet,
89th. North 73° 47′ East, 122.2 feet,
90th. North 76° 07′ East, 237.1 feet,
91st. North 37° 17′ East, 171.1 feet,
92nd. North 52° 13′ West, 61.3 feet,
93rd. North 45° 23′ West, 111.8 feet,
94th. North 9° 17′ West, 237.1 feet,
95th. South 89° 28′ East, 98 feet,
96th. South 70° 43′ East, 131.8 feet,
97th. North 85° 32′ East, 127.1 feet,
98th. South 30° 03′ East, 92.8 feet,
99th. North 32° 57′ East, 146.3 feet,
100th. North 87° 57′ East, 109.2 feet,
101st. South 83° 58′ East, 195 feet,
102nd. North 46° 02′ East, 117.1 feet,
103rd. North 80° 02′ East, 179.8 feet; at the end of 129 feet, a stream enters on the left, thence,

104th. South 76° 16′ East 152.8 feet,
105th. South 65° 18′ East 89 feet,
106th. North 62° 27′ East 151.7 feet, where a good sized stream enters on the left, thence,

107th. South 84° 25′ East, 136.8 feet,
108th. South 16° 43′ East, 169.7 feet,
109th. South 67° 43′ East, 254.2 feet, where a stream enters on the right, thence,

1526

110th. North 64° 19′ East, 189 feet,
111th. North 39° 59′ East, 124.4 feet,
112th. North 32° 12′ East, 196.5 feet,

113th. North 44° 17′ East, 130 feet; at the end of 88 feet on this line crossed the road leading from Mosser's to Yough Glades; thence,
114th. South 88° 13′ East, 188 feet,
115th. North 78° 17′ East, 274.8 feet,
116th. South 80° 28′ East, 154 feet,
117th. North 64° 52′ East, 176 feet,
118th. North 52° 04′ East, 81.7 feet,
119th. South 85° 43′ East, 178 feet,
120th. North 70° 27′ East, 70 feet,
121st. North 11° 32′ East, 106.2 feet,
122nd. South 88° 13′ East, 40.8 feet,
123rd. South 80° 03′ East, 193.5 feet,
124th. North 62° 35′ East, 145.6 feet,
125. North 77° 47′ East, 194 feet,
126th. North 54° 32′ East, 71.6 feet,
127th. North 70° 59′ East, 86.2 feet,
128th. South 76° 08′ East, 139.8 feet,
129th. North 69° 37′ East, 63.4 feet,
130th. South 79° 13′ East, 90.8 feet,
131st. North 78° 57′ East, 88.8 feet,
132nd. South 63° 11′ East, 106 feet,
133rd. North 44° 42′ East, 138.9 feet; at the end of 63 feet on this line a small stream enters on he right.

1527

134th. North 23° 47′ East, 116.7 feet,
135th. North 65° 37′ East, 108.5 feet,
136th. North 41° 42′ East, 107.2 feet,
137th. North 5° 13′ West, 120.9 feet,
138th. North 39° 22′ East, 147.3 feet,
139th. North 49° 53′ West, 114.1 feet
140th. North 40° 17′ East, 163 feet,
141st. North 9° 37′ East, 89 feet,
142nd. North 81° 37′ East, 92.8 feet,
143rd. South 84° 43′ East, 131 feet,
144th. North 12° 12′ East, 191.1 feet,
145th. North 14° 57′ East, 90.5 feet,
146th. North 12° 47′ East, 151 feet,
147th. North 60° 02′ East, 59.4 feet,
148th. North 24° 14′ East, 52.8 feet,
149th. North 71° 19′ East, 164.5 feet,
150th. North 31° 32′ East, 107 feet,
151st. North 50° 37′ East, 78.1 feet,
152nd. North 34° 19′ East, 84 feet,
153rd. North 44° 47′ East, 41 feet,
154th. North 9° 17′ East, 171.6 feet, to a point 2 feet North of an ash and a lynn tree, marked with 4 notches; at the end of 140 feet on this line a large run, which heads on the Backbone mountain — enter on the left; thence,
155th. North 79° 32′ East, 191 feet,

1528

156th. North 3° 47′ East, 225 feet,
157th. North 55° 20′ East, 94.2 feet,
158th. South 59° 08′ East, 141.1 feet,
159th. North 30° 42′ East, 160.5 feet,
160th. North 50° 52′ East, 80 feet,
161st. North 65° 27′ East, 150 feet,
162nd. North 63° 17′ East, 55 feet,
163rd. North 15° 47′ East, 100 feet,
164th. South 80° 03′ East, 112.8 feet,
165th. South 38° 13′ East, 63.5 feet,
166th. North 1° 45′ East, 140.8 feet,
167th. North 61° 57′ East, 80 feet,
168th. North 15° 32′ East, 129 feet,
169th. North 86° 13′ West, 88 feet,
170th. North 32° 35′ East, 243 feet,
171st. North 33° 20′ East, 87.8 feet,
172nd. North 00° 17′ East, 154 feet,
173rd. North 40° 43′ East, 180.8 feet,
174th. North 41° 32′ East, 101.7 feet,
175th. North 26° 27′ East, 125.5 feet,
176th. North 00° 08′ West, 168 feet,
177th. North 67° 57′ East, 256 feet,
178th. North 24° 57′ East, 91 feet,
179th. North 39° 48′ West, 140 feet,
180th. North 45° 47′ East, 139.5 feet; at the end of 64 feet on this line crossed the 16th line of a tract of land called "Elk Garden," in Garrett County, and marked a small hemlock tree with 4 notches, thence,

1529

181st. North 39° 17′ East, 121.2 feet,
182nd. North 27° 47′ East, 97.7 feet,
183rd. North 54° 59′ East, 223 feet,
184th. South 66° 09′ East, 153.3 feet,
185th. North 41° 32′ East, 76.7 feet,
186th. North 25° 32′ East, 231 feet,
187th. North 1° 17′ East, 107.3 feet,
188th. South 77° 33′ East 233.8 feet,
189th. North 69° 07′ East, 71.4 feet,
190th. North 56° 52′ East, 128.7 feet,
191st. North 84° 22′ East, 179 feet,
192nd. North 59° 07′ East, 237.6 feet,
193rd. North 86° 37′ East, 64 feet,
194th. North 76° 37′ East 102.5 feet,
195th. South 77° 48′ East, 141.9 feet,
196th. North 00° 32′ East, 187 feet,
197th. North 38° 08′ West, 119.4 feet,
198th. North 64° 32′ East, 439.3 feet,
199th. North 52° 42′ East, 146.7 feet,
200th. South 63° 33′ East, 66.7 feet,

201st. North 37° 32′ East, 105.2, feet, to the mouth of a good sized run entering on the left, and heading on the Backbone mountain, thence,
202nd. North 16° 47′ East, 67.8 feet,
203rd. South 49° 03′ East, 95 feet, to a stake marked "Oct. 27th." From this stake took a reference to a flat rock marked with an "X" and circle, Nov. 13, '99, North 18° 38′ West, 47 feet, thence

1530

204th. South 24° 28′ East, 140 feet,
205th. South 58° 33′ East, 192 feet; at the end of 20 feet on this line Laurel run is crossed by the county road leading to Mosser's; thence,
206th. North 89° 17′ East, 688.5 feet,
207th. South 43° 23′ East, 135 feet,
208th. North 83° 19′ East, 273.5 feet; at the end of 143.5 feet on this line, a run enters on the right, thence,
209th. North 88° 19′ East, 181 feet,
210th. North 23° 39′ East, 561.5 feet,
211th. North 85° 17′ East, 130.3 feet,
212th. North 46° 15′ East, 284.5 feet,
213th. North 28° 07′ East, 520 feet,
214th. North 77° 29′ East, 69.7 feet,
215th. North 51° 02′ East, 115 feet,
216th. North 18° 27′ East, 132 feet,
217th. North 76° 47′ East, 255 feet,
218th. North 53° 19′ East, 195.4 feet,
219th. North 4° 49′ East, 150.7 feet,
220th. North 48° 35′ East, 191.4 feet,
221st. North 17° 47′ East, 106.7 feet,
222nd. South 68° 58′ East, 206.2 feet,
223rd. North 36° 57′ East, 403.5 feet,
224th. South 84° 03′ East, 355 feet,
225th. North 11° 57′ East, 246 feet,
226th. North 84° 02′ East, 257.4 feet,
227th. North 60° 19′ East, 144 feet,

1531

228th. North 81° 32′ East, 169.7 feet,
229th. North 40° 37′ East, 95.5 feet,
230th. North 8° 55′ East, 104.4 feet,
231st. North 76° 49′ East, 192.5 feet; at the end of 112 feet on this line the North Fork of Laurel run enters on the left, said stream being the principal tributary of Laurel run, heading on the Backbone mountain, thence,
232nd. North 20° 41′ West, 173.5 feet,
233rd. North 75° 07′ East, 122.4 feet,
234th. South 54° 43′ East, 463 feet,
235th. South 85° 26′ East, 152 feet,
236th. South 42° 30′ East, 130.5 feet,
237th. North 80° 02′ East, 105.2 feet,

238th. South 16° 40′ East, 242.8 feet,
239th. South 00° 35′ East, 172 feet,
240th. South 45° 03′ East, 90 feet,
241st. North 86° 22′ East, 117 feet,
242nd. North 39° 47′ East, 425.8 feet,
243rd. North 17° 21′ East, 345.5 feet; at the end of 20 feet on this line the Dobbin county road is crossed, thence,
244th. North 38° 37′ East, 301.5 feet,
245th. North 48° 04′ East, 569.7 feet,
246th. North 2° 48′ West, 202 feet,
247th. North 30° 27′ East, 227.5 feet,
248th. North 83° 47′ East, 118 feet,

1532

249th. South 55° 28′ East, 210 feet; at the end of 143.3 feet on this line, I marked an "X" and circle on a ledge of flat rocks, thence,
250th. South 88° 23′ East, 543.5 feet,
251st. North 36° 12′ East, 296.7 feet,
252nd. South 86° 03′ East, 356.5 feet,
253rd. North 74° 51′ East, 563 feet,
254th. South 68° 58′ East, 297 feet,
255th. South 16° 37′ West, 175 feet,
256th. South 27° 28′ East, 210.5 feet,
257th. North 24° 05′ East, 335.3 feet,
258th. South 85° 03′ East, 293 feet,
259th. South 30° 23′ East, 290 feet,
260th. North 71° 52′ East, 257 feet,
261st. South 77° 33′ East, 423 feet,
262nd. South 71° 21′ East, 458.3 feet,
263rd. North 85° 20′ East, 183.7 feet,
264th. South 85° 25′ East, 342 feet,
265th. South 88° 20′ East, 145.3 feet, to a large flat rock, marked with a cross and circle, at the mouth of Laurel run where it empties into the Potomac river, and which rock is on the left hand bank of the run and River. From this rock the following reference line was run down the River, to-wit: South 88° 20′ East, 158.6 feet, to a solid rock on the right
1533 bank of the Potomac river and marked "W. A. S." and with a cross and circle; said rock being near 2 birch trees marked with 4 notches each, standing on the South bank of the River, and being the same point called for in the location of said river, as standing below the town of Dobbin, and at the initial point of said location. I then returned to said "Station No. 87," on Laurel run, and located for a short distance another branch of said run, which enters the main stream at said Station, according to the following courses and distances, to-wit:

(*a*) South 10° 45′ West, 64.7 feet,
(*b*) South 89° 40′ West, 87 feet,
(*c*) South 67° 10′ West, 61 feet,

(*d*) South 00° 48′ East, 100 feet,
(*e*) South 88° 07′ West, 111.5 feet,
(*f*) South 75° 05′ West, 50 feet,

Lauren run is designated and shown upon the plats by the words, Laurel Run, and by solid blue lines from its junction with the Potomac river, to its head fountain.

South Prong of the Potomac River.

By direction of Counsel for the State of Maryland, I further certify and return, that the following courses and distances of the stream, designated by the Surveyor for the State of West Virginia as the "South Prong of the Potomac River," were made from and are the result of actual survey by the State of West Virginia, and the same are adopted by the State of Maryland, as showing the true location of said stream.

The Surveyor for the State of West Virginia began said
1534 location at a stake marked "0.0 Sept. 14th." standing upon the left bank of the Potomac river, and North 26° 45′ West, 24.4 feet from a stake set by me, at the mouth of said stream, marked "Nov. 10th, 1899," and ran thence,

1st. South 40° 10′ East, 87.2 feet,
2nd. South 43° 50′ East, 86.5 feet,
3rd. South 6° 50′ West, 78 feet,
4th. South 20° 55′ East, 66.5 feet,
5th. South 22° 10′ West, 325.1 feet,
6th. South 3° 50′ West, 177 feet,
7th. South 20° 10′ West, 214.2 feet,
8th. South 19° 25′ East, 77.3 feet, to a fork in the stream, thence,
9th. South 22° 25′ East, 205 feet,
10th. South 24° 50′ East, 168 feet,
11th. South 32° 20′ East, 332.1 feet,
12th. South 20° 25′ East, 233.2 feet,
13th. South 34° 25′ East, 145.1 feet,
14th. South 45° 40′ East, 259.2 Feet,
15th. South 27° 10′ East, 337.8 feet,
16th. South 00° 40′ East, 405 feet, to a fork in the stream, thence,
17th. South 21° 30′ East, 253 feet,
18th. South 3° 00′ East, 234.5 feet,
19th. South 5° 40′ West, 144.5 feet, to a fork in the stream, thence,
20th. South 5° 25′ East, 220.2 feet,
21st. South 26° 50′ West, 250 feet,
22nd. South 7° 55′ East, 261 feet,
23rd. South 00° 10′ East, 257.5 feet,
24th. South 8° 40′ East, 237.5 feet,
25th. South 2° 00′ East, 191 feet,
1535
26th. South 12° 25′ East, 84.8 feet,
27th. South 21° 50′ West, 80.5 feet,

28th. South 5° 10′ West, 56.6 feet,
29th. South 38° 50′ East, 125.4 feet,
30th. South 15° 50′ West, 173.8 feet,
31st. South 00° 40′ East, 85 feet, to a fork in the stream, thence,
32nd. South 25° 20′ East, 98.7 feet,
33rd. South 42° 30′ East, 197 feet,
34th. South 11° 30′ East, 240 feet, to a fork in the stream, thence,
35th. South 2° 40′ East, 50.5 feet,
36th. South 9° 00′ West, 44.1 feet,
37th. South 17° 30′ East, 96.7 feet,
38th. South 3° 20′ West, 75.5 feet,
39th. South 7° 10′ East, 49 feet,
40th. South 48° 00′ West, 57.4 feet, to a fork in the stream, thence,
41st. South 21° 50′ West, 78 feet,
42nd. South 4° 05′ West, 81.5 feet,
43rd. South 16° 00′ East, 106.1 feet,
44th. South 5° 50′ East, 124 feet,
45th. South 9° 25′ East, 81.5 feet,
46th. South 44° 30′ West, 125 feet,
47th. South 1° 40′ East, 101.2 feet,
48th. South 29° 20′ West, 50.9 feet, to a fork in the stream, thence,
49th. South 5° 55′ East, 96.5 feet,
50th. South 19° 55′ East, 93 feet,
51st. South 32° 10′ East, 122.5 feet,
52nd. South 60° 00′ East, 187.5 feet, to a fork in the stream, thence,
53rd. South 63° 10′ East, 50 feet,

1536

54th. South 81° 00′ East, 128 feet,
55th. South 63° 40′ East, 85.7 feet,
56th. South 89° 55′ East, 104 feet,
57th. North 75° 50′ East, 53.7 feet,
58th. South 63° 10′ East, 46 feet, to a fork in the stream, thence,
59th. South 83° 40′ East, 169.1 feet,
60th. North 74° 05′ East, 52.5 feet,
61st. North 55° 35′ East, 62.4 feet,
62nd. South 68° 25′ East, 47 feet,
63rd. North 85° 35′ East, 40 feet,
64th. South 75° 10′ East, 40 feet, to the head spring of the stream, which point is shown upon the plats by the letters and figures, "Oct. 24" 1899," and said stream is designated and shown upon the plats by solid blue lines from its junction with the Potomac river to its head fountain.

The above courses are corrected with an allowance of 3° 10′ for declination, in order to bring them into their true relation to the Meridian, the Surveyor on the part of the State of West Virginia having taken the magnetic courses only.

Actual Difference in Level Between Potomac and Fairfax Springs.

Having found from the above locations, that "Potomac Stone," was at the most westerly source of the Potomac river, and
1537 that it was within 301.3 feet of the top of the mountain and the Atlantic watershed, I then, by direction of Counsel for the State of Maryland, proceeded to ascertain the actual difference in level between the "Potomac and "Fairfax" springs, and to obtain, at the same time, the actual elevation of the "Potomac Stone" above tide, I assumed the elevation of "Fairfax Summit," upon the line of the West Virginia Central and Pittsburg Railway, as 3066 feet, from figures and data furnished by James Galbraith, Esquire, Engineer of said road, and ran thence an actual line of levels as follows:

1538

Back.	Fore.	Rod.	Instrument.	Elevation.	
4.035	1.050	.....	3070.035	3066.000	Fairfax Summit.
10.651	0.635	.....	3079.636	3068.985	
10.270	0.190	.....	3089.271	3079.001	
11.854	0.125	.....	3100.935	3089.081	
11.443	0.805	.....	3112.253	3100.810	
8.931	0.300	.....	3120.379	3111.448	
11.820	0.300	.....	3131.899	3120.079	
9.853	0.614	.....	3141.452	3131.599	
8.170	0.000	.....	3149.008	3140.835	
5.804	0.777	.....	3154.812	3149.008	
8.205	0.797	.....	3162.240	3154.035	
11.775	1.135	.....	3173.218	3161.443	
12.185	1.820	.....	3184.268	3172.083	
11.035	0.230	.....	3193.485	3182.448	
10.409	6.225	.....	3203.662	3193.253	
2.000	1.329	.....	3199.437	3197.437	
1.325	11.335	.....	3199.433	3198.108	
1.900	10.570	.....	3189.998	3188.098	
1.900	8.498	.....	3181.328	3179.428	
7.349	1.810	.....	3180.179	3172.830	
11.640	1.360	.....	3190.009	3178.369	
5.635	8.500	.....	3194.284	3188.649	
1.925	8.465	.....	3187.709	3185.784	
2.160	5.245	.....	3181.404	3179.244	
1.685	5.690	.....	3177.844	3176.159	
3.700	6.665	.....	3175.854	3172.154	
1.875	8.180	.....	3171.064	3169.189	
2.881	5.105	.....	3166.765	3163.884	
7.400	6.644	.....	3169.060	3161.660	
				3162.416	Fairfax Stone.
.....	.. ....	6.644	.....	3162.416	1st spring at Fairfax Stone.

1539 It will thus be seen that the elevation of Fairfax spring is 3162.416 feet above tide.

Continuing said line of levels from Fairfax spring as above,

Back.	Fore.	Rod.	Instrument.	Elevation.	
1.340	7.535	.....	3163.756	3162.416	Fairfax Spring.
5.075	2.040	.....	3161.296	3156.221	
11.320	2.500	.....	3170.576	3159.256	
4.140	11.370	.....	3172.216	3168.076	
1.410	4.235	.....	3162.256	3160.846	
0.380	11.525	.....	3158.401	3158.021	
0.650	11.845	.....	3147.526	3146.876	
0.100	11.770	.....	3135.781	3135.681	
0.250	11.765	.....	3124.261	3124.011	
0.830	10.450	.....	3113.326	3112.496	
.....	.....	.....	.....	3102.876	B. M. on rock.

At this point, it was an advantage to take a long sight of about 4000 feet to avoid unnecessary leveling, and a correction therefore of 0.451 feet is made for refraction and curvature of the earth, and I continued said line of levels with the following result, viz:—

1540

Back.	Fore.	Rod.	Instrument.	Elevation.	
3.470	1.995	.....	3106.346	3104.351	
				0.451	
		True elevation.....		3103.900	B. M. No. 3.
4.495	4.050	.....	3108.395	3103.900	
4.190	10.680	.....	3108.535	3104.345	
2.340	11.820	.....	3100.195	3097.855	
1.025	11.910	.....	3089.400	3088.375	
1.310	11.720	.....	3078.800	3077.190	
1.500	5.580	.....	3068.580	3067.080	
2.375	11.690	.....	3065.375	3063.000	

1541

0.220	11.100	.....	3053.905	3053.685	
0.020	0.630	.....	3024.825	3042.805	
12.200	1.420	.....	3054.395	3042.195	
1.965	11.660	.....	2054.940	3052.975	
3.335	0.685	.....	3046.615	3043.280	
10.040	0.500	.....	3055.970	3045.930	
5.175	11.385	.....	3060.645	3055.470	
0.210	4.565	.....	3049.470	3049.260	
9.495	6.760	.....	3054.400	3044.905	
5.335	0.655	.....	3052.975	3047.640	
11.400	0.805	.....	3063.720	3052.320	

11.475	0.000	.....	3074.390	3062.915
10.780	0.650	.....	3085.170	3074.390
11.900	0.810	.....	3096.420	3084.520
10.835	1.330	.....	3106.445	3095.610
10.535	0.735	.....	3115.650	3105.115
10.340	0.780	.....	3125.255	3114.915
11.875	0.690	.....	3136.350	3124.475
11.390	0.570	.....	3147.050	3135.660
11.985	0.720	.....	3158.465	3146.480
12.120	0.725	.....	3169.865	3157.745
10.725	0.770	.....	3179.865	3169.140
10.075	0.875	.....	3189.170	3179.095
11.290	0.725	.....	3199.585	3188.295
11.605	0.855	.....	3210.465	3198.860
11.295	1.015	.....	3220.905	3209.610
11.745	0.760	.....	3231.635	3219.890
11.230	0.770	.....	3242.105	3230.875

1542

Back.	Fore.	Rod.	Instrument.	Elevation.
10.985	2.080	.....	3252.320	3241.335
10.415	0.780	.....	3260.655	3250.240
11.035	0.730	.....	3270.910	3259.875
12.170	0.760	.....	3282.350	3270.180
12.210	0.505	.....	3293.800	3281.590
12.040	0.850	.....	3305.335	3293.295
12.150	1.185	.....	3316.635	3304.485
11.450	0.680	.....	3326.900	3315.450
8.585	0.810	.....	3334.805	3326.220
12.190	0.610	.....	3346.185	3333.995
10.960	0.850	.....	3356.535	3345.575
11.490	0.550	.....	3367.175	3355.685
6.940	4.790	.....	3373.565	3366.625
4.935	2.160	.....	3373.710	3368.775
5.785	3.045	.....	3377.735	3371.550
6.550	0.780	.....	3380.840	3374.290
4.050	9.020	.....	3384.110	3380.060
6.850	3.720	.....	3381.940	3375.090
1.390	4.680	.....	3379.510	3378.220
9.075	1.645	.....	3384.005	3374.970
3.945	8.120	.....	3386.305	3382.360
0.805	11.400	.....	3378.990	3378.185
1.205	11.560	.....	3368.795	3367.590
0.750	7.345	.....	3357.955	3357.205
3.200	11.675	.....	3352.810	3350.610
1.480	1.195	.....	3343.615	3342.135
9.355	2.590	.....	3351.775	3342.420

1543

6.935	11 785	.....	3356.120	3349.185
0.170	11.625	.....	3344.505	3344.335

1.695	11.655	.....	3334.575	3332.880	
0.310	11.810	.....	3323.230	3322.920	
0.960	11.900	.....	3312.380	3311.420	
0.590	8.350	.....	3301.070	3300.480	
				3292.720	B. M. No. 11, on copper bolt in planted stone which is 11 feet due north of "Potomac Spring.
	13.950	.....		3287.120	Water of head spring of Potomac River

Summary.

Elevation of Potomac Spring above tide.....	3287.120 feet
Elevation of Fairfax Spring above tide.....	3162.416 feet
Actual difference in elevation in favor of Potomac Spring.....	124.704 feet

1544 The Allegheny Watershed.

I further certify and return, that by direction of Counsel for the State of Maryland, I made the following locations in order to show the relation of Potomac Spring; the crest of the Backbone mountain; the head of Lead Mine run and the head of Glade run.

I began said locations at Potomac Spring, and ran thence on the Meridian, North, 495.9 feet, to the planted rock with copper bolt inserted on the top of the Backbone mountain, thence in a southwesterly direction along the crest of said mountain, as follows:

South 31° 05′ West, 167.5 feet, thence,
South 35° 40′ West, 250.3 feet, to a hub and stake, marked "277.3," and at this stake, I turned an angle to the left and ran thence,
South 57° 57′ East, 277.3 feet, to Potomac Spring.

I then returned to the stake marked "277.3" designated upon the plats by the figures, 277.3 and ran thence,
South 35° 40′ West, 91.3 feet, to a stake marked "Station 98," set in the year, 1897, and from this stake, I turned an angle to the right, and located one of the head springs of Lead Mine run as follows:
South 75° 55′ West, 159 feet,
South 86° 20′ West, 91 feet, to the head of Lead Mine run, designated upon the plats as, Lead Mine run, the course of said stream being North 50° West, for its first 150 feet, as measured.

I then returned to "Station 98," and continued along the crest of the mountain,

1545

South 34° 10′ West, 2472.8 feet,
South 32° 15′ West, 468.8 feet,
South 27° 01′ East, 100 feet; then leaving the crest of the mountain,
South 27° 01′ East, 523.2 feet,

South 43° 46′ East, 177 feet, to a stake marked "177," and from this stake, I turned an angle to the right, and ran,
South 46° 14′ West, 8.7 feet, to one of the head springs of Glade run, designated upon the plats "Glade Run," and thence down the run,
South 47° 52′ East, 121 feet,
South 21° 32′ East, 688 feet,
South 37° 32′ East, 300 feet, to a stake marked "300," thence still down the run,
South 46° 25′ East, 185 feet, to a birch tree, blazed on four sides, at the forks of the stream, and one of the heads of Glade run, as located by the Surveyor for the State of West Virginia, on the 12th day of September, 1899.

Levels Showing the Actual and Comparative Elevations of Potomac Spring, Crest of Backbone Mountain, Head of Glade Run, as Located by the State of Maryland, and as Located by the State of West Virginia, and also the Head of Laurel Run.

The actual elevation of Potomac Spring is 3287.12 feet.

1546 The actual elevation of the copper bolt on the top of the Backbone mountain, in the planted stone, 495.9 feet North of Potomac Spring, which point is designated, "Bench Mark No. 10," is 3356.32 feet.

These elevations were obtained by an actual line of levels, run from Fairfax Summit above referred to.

In order to ascertain the elevation of the head of Glade run, I further certify and return, that by direction of Counsel for the State of Maryland, I began at "Bench Mark No. 10," above mentioned, on the top of Backbone mountain, and ran thence an actual line of levels, as follows, to-wit:

Back.	Fore.	Rod.	Instrument.	Elevation.	
				3356.32	Bench mark No. 10.
3.49	10.54	.....	3359.81	2356.32	
1.77	4.58	.....	3351.04	3349.27	
		3.98	.....	3347.06	Stake "277.3"
7.45	1.52	.....	3354 91	3346.46	
9.97	1.48	.....	3363.63	3353.39	
9.54	4.49	.....	3371.42	3366.93	
7.80	0.51	.....	3374.72	3374.22	
1.14	2.48	.....	3383.30	3380.82	
6.20	11.44	.....	3381.96	3370.52	
		3.77	.....	3372.95	B. M. No. 12, "X," on a rock.
10.98	1.46	.....	3386.24	3375.26	
0.80	11.48	.....	3375.56	3374.76	Top of Mountain.

1547

0.73	11.60	.....	3364.69	3363.96	
1.32	11.64	.....	3354.27	3352.95	
0.78	11.51	.....	3343.54	3342.76	
2.41	11.69	.....	3334.26	3331.85	
1.88	11.58	.....	3324.56	3322.68	
0.55	11.57	.....	3313.54	3312.99	
		10.87	.....	3302.67	Bench Mark No. 15 on small spruce.
0.09	11.63	.....	3302.76	3302.67	
0.04	11.90	.....	3291.17	3291.13	
0.71	11.77	.....	3279.98	3279.27	
0.53	11.84	.....	3268.74	3268.21	
		7.46	.....	3261.28	to water of head spring of Glade run as located by Maryland.
2.00	10.77	.....	3258.90	3256.90	
1.25	9.59	.....	3249.38	3298.13	
2.30	11.79	.....	3242.09	3239.79	
2.29	11.72	.....	3232.59	3230.30	
0.30	11.80	.....	3221.17	2220.87	
1.84	11.55	.....	3210.21	3109.37	
1.85	10.62	.....	3200.51	3198.66	
2.02	12.05	.....	3191.91	3189.89	
		12.05	.....	3179.86	to Bench Mark No. 16, on root of a birch tree.

1548 At this point, work with the spirit level was stopped by darkness, but I subsequently took a number of readings with the aneroid barometer, and found the mean of said readings to be 35.3 feet lower, between Bench Mark No. 16 and the water of Glade run, at the large birch tree blazed on four sides, heretofore referred to in these returns, located by the State of West Virginia, as the head of Glade run, and the actual elevation of said head spring is 3144.6 feet.

I further certify and return, that by direction of Counsel for the State of Maryland, in order to find the elevation of the head of Laurel run, I ran a line of actual levels, as follows, to-wit:

I began said line of levels at Bench Mark No. 7, on the root of a large spruce tree, and the elevation of said point being 3246.07 feet.

Back.	Fore.	Rod.	Instrument.	Elevation.	
				3246.07	Bench Mark No. 7.
4.78	1.28	.....	3250.85	3246.07	
4.56	5.65	.....	3254.13	3249.57	
2.57	7.50	.....	3251.05	3248.48	
3.38	11.91	.....	3246.93	3243.55	
2.45	8.78	.....	3237.47	3235.02	
		8.78	.....	3228.69	to head spring on Laurel run.

1549 I further certify and return, that by direction of Counsel for the State of Maryland, I took the following elevations by means of the aneroid barometer under favorable conditions as to temperature, distance and time, the readings being compared with points of known elevation.

1st. Bench Mark, Fairfax Stone, actual elevation..... 3162.4
2nd. Michler Spring, elevation by barometer..... 3134.0
3rd. Bauer-Michler Meridian, where it crosses the Potomac River..... 2709.0
4th. Head of Crooked run..... 3181.0
5th. Bench Mark, Fairfax Summit, W. Va. C. & P. R. R. Actual elevation..... 3066.0
6th. Spring at Fairfax Summit, near Fairfax house, one of the heads of Crooked run, elevation by barometer.... 3058.0
7th. Spring at Fairfax Station, tributary to the Potomac river, elevation by barometer..... 3051.0

I further certify and return, that by direction of Counsel for the State of Maryland, I ran a line of actual levels from the Bench Mark on Fairfax Summit, on the West Virginia Central and Pittsburg Railway, opposite to a white painted post marked "T. C. L.," as follows:

Back.	Fore.	Rod.	Instrument.	Elevation.	
				3066.00	Bench Mark Fairfax Summit.
6.30	10.42	.....	3072.30	3066.00	
2.72	11.28	.....	3364.60	3061.88	
1550					
2.75	11.74	.....	3056.07	3053.32	
2.63	9.50	.....	3046.96	3044.33	
1.40	11.13	.....	3038.86	3037.46	
2.61	10.90	.....	3030.34	3027.73	
1.37	11.74	.....	3020.81	3019.44	
2.63	9.92	.....	3011.70	3009.07	
1.40	9.50	.....	3003.18	3001.78	
12.31	0.55	.....	3005.99	2993.68	
12.18	0.34	.....	3017.62	3005.44	
12.26	0.88	.....	3029.54	3017.28	
11.68	0.49	.....	3040.34	3028.66	
12.27	1.90	.....	3052.12	3039.85	
5.86	1.20	.....	3056.08	3050.22	
9.57	1.66	.....	3064.45	3054.88	
12.36	1.13	.....	3075.15	3062.79	
11.27	0.50	.....	3085.29	3074.02	
11.37	0.41	.....	3096.16	3084.79	
11.94	2.59	.....	3107.69	3095.75	
11.81	0.88	.....	3116.91	3105.10	
10.77	1.93	.....	3126.80	3116.03	

9.69	3.20	.....	3134.56	3124.87	
9.21	1.85	.....	3140.57	3131.36	
10.95	4.90	.....	3149.67	3138.72	
		4.90	.....	3144.77	to stake marked, "Oct. 24" at the head spring of the South Prong of the Potomac River as designated and located by the State of West Virginia.

1551 Determination of the actual width of running water in the Potomac and Fairfax streams, from their junction at "Station No. 31," shown upon the plats, up each stream, a distance of 300 feet, made by actual survey and measurement on the 11th day of November, 1899.

I began said survey and measurements at Station No. 31, as a basis for said measurements, I ran the following courses and distances up the Potomac stream, dropping a pin at the end of every 10 feet, measuring the running water at right angles to the line as run, continuously from 1 to 300 feet.

1st. North 34° 42′ West, 80.3 feet,
2nd. North 6° 56′ West, in all, 145 feet,
3rd. North 73° 29′ West, in all, 240 feet,
4th. South 29° 08′ West, in all, 287.5 feet,
5th. North 63° 37′ West, in all, 300 feet from Station No. 31.

I then returned to said Station No. 31, and ran thence as before, up the Fairfax run.

1st. South 80° 10′ West, 89.4 feet,
2nd. South 58° 47′ West, in all, 323.6 feet,
3rd. South 75° 18′ West, in all, 300 feet, from Station No. 31.

For reference, I then ran down the river,

1st. North 80° 02′ East, 98.2 feet,
2nd. South 54° 23′ East, in all, 207.6 feet,
3rd. North 74° 29′ East, in all, 300 feet, from Station No. 31.

1552 Measurements of Running Water in Potomac Stream and Fairfax Run, as Above Noted.

Distance from station No. 31.	Potomac stream.	Distance from station No. 31.	Fairfax run.
20 feet	5 feet	20 feet	10 feet
30 feet	3 "	30 feet	6 "
40 feet	6 "	40 feet	8 "
50 feet	7 "	50 feet	5 "
60 feet	5 "	60 feet	4 "
70 feet	10 "	70 feet	3 "
80 feet	10 "	80 feet	5 "
90 feet	9 "	90 feet	10 "
100 "	6 "	100 "	6 "
110 "	10 "	110 "	5 "
120 "	4 "	120 "	6 "
130 "	6 "	130 "	3 "
140 "	4 "	140 "	7 "
150 "	13 "	150 "	4 "
160 "	7 "	160 "	7 "
170 "	12 "	170 "	14 "
180 "	9 "	180 "	8 "
190 "	12 "	190 "	4 "
200 "	8 "	200 "	5 "
210 "	10 "	210 "	18 "
220 "	7 "	220 "	10 "
230 "	5 "	230 "	7 "
240 "	6 "	240 "	7 "
250 "	8 "	250 "	5 "
1553 260 "	14 "	260 "	18 "
270 "	22 "	270 "	15 "
280 "	22 "	280 "	11 "
290 "	15 "	290 "	7 "
300 "	11 "	300 "	5 "
Total....	266 "	Total.....	238 "
Average width ... 9.14 "		Average width	8.2 "

1554 The Meridian Lines.

I further certify and return, that by direction of Counsel for the State of Maryland, I then prolonged the Fairfax meridian from "Station No. 0," above mentioned, to the top of Backbone Mountain, a distance of two and eight-tenth miles from "Fairfax Stone;" said meridian crosses "Laurel Run," one of the principal tributaries of the upper Potomac river. This work was done in order to demonstrate the fact that, not only the Potomac river proper, but also its chief tributary rise West of the Fairfax meridian, and that the "Fairfax Stone" is quite a long distance from the watershed.

The services of Dr. L. A. Bauer, whose name has already been mentioned, were obtained as Astronomer and Magnetician, and to

him was entrusted the laying out of the new Meridian from "Potomac Spring," as also the reproduction of the Meridian from "Fairfax Stone."

Dr. Bauer was eminently fitted for this work, having been a member of the United States Coast and Geodetic Survey, and at the time we secured his services in this connection, he was engaged upon magnetic work for the Maryland Geological Survey.

He was supplied with accurate and valuable instruments, belonging to the Coast and Geodetic Survey, and through the courtesy of the Maryland Geological Survey, Dr. Bauer was permitted to use these instruments in his work in this case.

Under the instructions from Counsel for the State of Maryland, we were to run a Meridian line from the most Western source of the Potomac river to "Mason and Dixon Line," and at the same time to run a Meridian line from the "Fairfax Stone" as had been
1555 done by Lieut. Michler, in the year, 1859.

After the approximate determination of the Meridian lines at their initial points, viz:—"Fairfax Stone" and "Potomac Stone," it was decided that the top of the Backbone mountain, the highest point, should be the principal observation station of each Meridian, and the lines should be produced from said point.

The astronomical observations were made on Polaris, near Eastern elongation, and when the direction of the Meridians was determined, they were prolonged from mountain top to mountain top, by the method of measuring the angle between the backsight and foresight, which had been set approximately in line.

A detailed report of the work done by Dr. Bauer will be found appended to these returns.

The principal observation station of the Fairfax Meridian, or as it is designated upon the plats, "Bauer-Michler Line," was upon the Backbone mountain, two and eight-tenth miles North of "Fairfax Stone," while the corresponding station upon the Meridian from the "Potomac Stone," designated upon the plats, "Brown-Bauer Line," was also upon the Backbone moutain. 495.9 feet, North of "Potomac Stone."

The work upon the Meridian lines was pushed along simultaneously by Dr. Bauer. For example—after getting through on the "Bauer-Michler Line" at Backbone mountain, he moved to the "Potomac Stone" and got the "Brown-Bauer Line" from the mountain at that point.

It was decided to prolong the "Bauer-Michler" meridian from one mountain top to another, without marking intermediate points.

The "Brown-Bauer Line," was run by Dr. Bauer in the same manner, except that all intermediate points, when available, were marked by him, and I ran the Meridian line consecutively
1556 upon the ground from point to point, in Meridian as established by Dr. Bauer.

Beginning at "Potomac Stone," the "Brown-Bauer Line" was cut out through the woods, marked at all important points and carefully chained horizontally, thus furnishing full notes of the mountains,

streams, roads &c., while at the same time providing a base line of reference for other work connected with this survey.

The instrument I used in the work of running the "Brown-Bauer Line," was a six inch engineer's transit, and was a good instrument of its kind, and the method employed was by backsight and foresight, with telescope direct and telescope reversed, using as targets, tripods especially constructed for this work.

The line thus traced is over a very rough and broken country, and was run under all conditions of wind and weather. Any deviation of my work from the meridian points, as established by Dr. Bauer, was corrected, and all stakes and intermediate points, upon the line as run by me put into Meridian by multiplying the tangent of the angle of deviation by their respective distances.

Brown-Bauer Meridian Line.

The first transit station occupied on this line was upon the summit of the Backbone mountain, over the meridian station established by Dr. Bauer, where a rock was planted with copper bolt inserted; a backsight was taken upon "Potomac Stone," also planted in meridian, 11 feet North of "Potomac Spring," and the line was prolonged by a system of backsights and foresights.

All measurements of distance are referred to "Potomac Spring" as the initial point in this line.

495.9 feet, to planted rock and bolt at top of Backbone mountain, thence down the West face of the mountain,

1557

4615.2 feet, to stake No. 1, on North side of the county road leading to Thomas, West Virginia,
5280 feet to 1st, mile stake on the West face of a hill,
6265 feet, to the top of a ridge,
7099 feet, to stake No. 2, on the South side of the road leading to Lead Mine Run, West Virginia,
8110 feet, to the top of a ridge, thence down a very steep hill,
8800 feet, to a branch of Wolf creek,
10560 feet, to 2nd mile stake,
11400 feet, to North fork of Wolf creek,
13350 feet, to the top of a ridge,
14194 feet, to stake No. 3, on the North side of county road,
14625 feet, to a small run,
15840 feet, to 3rd mile stake, near Joseph Rembold's spring drain,
17753.3 feet, to an established point in meridian on Rembold's hill, at which point, "First Tie Line," shown upon the plats, was also established.

In order to permanently preserve this station I carried the line back 57.6 feet and planted a large stone with copper bolt inserted therein. This stone is 5 x 8 inches and 2½ feet long, and was sunk 6 inches below the surface of the ground; the copper bolt was leaded in and a cross cut upon the top thereof, in meridian. Wit-

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nesses, W. McCulloch Brown, James A. Sincell, Reed Wolf, Clay Rodeheaver, John Slabach and a son of Joseph Rembold. The following references were taken from this stone, viz:—The needle of the transit pointed North 3° East, at 4 o'clock P. M., Sept. 14th, 1897, on meridian.

North 24° 25′ East, to the top of D. H. Winter's hill.
North 77° 03′ East, 79 feet, to a locust tree, 1 foot in diameter.

1558

South 48° 33′ East, to brick chimney of Joseph Rembold's house.
South 33° 45′ East, to west comb of roof of Joseph Rembold's barn.
South 38° 25′ West, to signal pole.
North 56° 508′ West, 144.4 feet, to a locust tree, 10 inches in diameter.
The stone is near a fence row.
18259 feet, to stake No. 4, on North side of county road leading to Horse Shoe Run, West Virginia.
19200 feet, to a small run flowing West,
19450 feet, to a small run flowing West,
20727 feet, to stake No. 5, on North side of road leading from Oakland to Horse Shoe Run, West Virginia.
21120 feet, to 4th mile stake; this stands in oak woods.
22690 feet, to a small run flowing East.
23500 feet, to the top of a ridge.
25325 feet, to the center of Maple run, flowing East,
25895.5 feet, to stake No. 6, near John Fike's.
26255.7 feet, to stake No. 7, on North side of road leading to Eglon.
26400 feet, to 5th mile stake, in John Fike's field.
28960 feet, to top of Lewis Bush' hill. I planted a stone at this point, 8 x 10 inches and 2½ feet long, just below the surface of the ground, marking the meridian with a copper bolt, with cross in the top. This stone is near a fence dividing the properties of Bush and Selders. Witnesses: W. McCulloh Brown, Richard T. Browning, Edmund Jamison, Andrew Nelson, Reed Wolf, James A. Sincell and Clay Rodeheaver.
30995 feet, to a small run flowing East,

1559

31108.8 feet, to stake No. 8, on North side of road leading to Eglon.
31640 feet, to the 6th mile stake, in the woods.
32816.5 feet, to stake No. 9, on the North side of county road leading from Eglon to Oakland.
34925 feet, to a run flowing East,
36100 feet, to the top of a ridge.
36960 feet, to the 7th mile stake, in white oak woods.
37888.6 feet to hub, Second tie line.
38281 feet, to a stake and hub, marked 38281.
38353.6 feet, to a hub, top of Offutt's hill.
39600 feet, to 7½ mile stake, in the woods.
40760 feet, to stake No. 10, on the South side of the Northwestern turnpike.

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40850 feet, to stake No. 11, on the North side of Northwestern turnpike.

At the end of 40844.8 feet, I planted a stone with copper bolt inserted, with cross in meridian. This stone is below the surface of the ground. Witnesses: Edward H. Sincell, W. McCulloch Brown, Richard T. Browning and Edmund Jamison. The course of the Northwestern turnpike at this point is North 30° 07′ West.

42240 feet, to the 8th mile stake.

42650 feet, to Ryan creek.

42929.5 feet, to stake No. 12, on the North side of county road leading to Oakland.

44880 feet, to the 8½ mile stake.

46998 feet, to Meridian station on top of "Foley" mountain. At this point I planted a sandstone rock, [illegible] x 14 inches and three

1560

feet long. This rock is planted about 6 inches below the surface, imbedded in broken stone. A copper bolt is inserted, marked by a cross in meridian. Upon the top of this rock a flat stone was placed and the whole covered with a mound of earth and stone. This rock is in the center of the cutting, about 100 feet, North of the South face of the mountain. Witnesses: W. McCulloh Brown, William A. Brown, Reed Wolf, James A. Sincell, Clay Rodeheaver and Harry Ashby.

47520 feet, to the 9th mile stake.

50160 feet, to the 9½ mile stake.

52800 feet, to the 10th mile stake.

55440 feet, to the 10½ mile stake.

57191 feet, to stake No. 13, on the North side of Preston Lumber and Coal Company Railroad.

57390 feet, to the center of Laurel run, flowing East.

58080 feet, to the 11th mile stake.

59205 feet, to a hub on the top of a ridge.

60200 feet, to a branch of Laurel run, flowing East.

60720 feet, to the 11½ mile stake.

61433 feet, to a hub in Samuel Crane's land.

633360 feet, to the 12th mile stake, near Samuel Crane's house.

65465 feet, to a branch of Laurel run, flowing East.

65617 feet, to stake No. 14, on the South side of the county road, leading from Corinth to Nordeck's schoolhouse.

66000 feet, to the 12½ mile stake, on the North side of the county road.

68640 feet, to the 13th mile stake.

1561

70223.6 feet, to a point in meridian, established on Samuel De Berry's hill. At this point, I planted a rock, 5 x 7 inches and 3 feet long, allowing it to project 4 inches above the ground, inserting a copper bolt and marking it with a cross in meridian. Witnesses: W. McCulloh Brown, William A. Brown, Edward H. Sincell, Edmund Jamison, Andrew Nelson, Reed Wolf, Clay Rodeheaver, William H. Kitzmiller, Jr., Harry Ashby, Thomas Browning, Fred A. Thayer and Richard T. Browning.

71280 feet, to the 13½ mile stake.
73920 feet, to the 14th mile stake.
76560 feet, to the 14½ mile stake.
77250 feet, to a hub marked, 77250.
77947.5 feet, to a hub. Third tie line.
78250 feet, to a hub on the face of a rocky bluff.
79200 feet, to the center of Snowy creek, and the end of 15 miles. I set a stake on the North bank of said stream, which flows East.
79995 feet, to a stake No. 15, standing on the South side of the right of way of the Baltimore and Ohio Railroad.
80061 feet, to stake No. 16, standing on the North side of the right of way of the Baltimore and Ohio Railroad.
80675 feet, to a hub standing just West of the "Washington Manor" house.
80750 feet, to stake No. 17, on the North side of the Oakland and Terra Alta road.
81840 feet, to the 15½ mile stake.
82550 feet, to the top of the Washington hill.
84480 feet, to the 16th mile stake, on the North side of a small run.

1562

86190 feet, to stake No. 18, on the North side of a road leading from Morrison's to Griffith's.
86500 feet, to the North branch of Snowy creek, flowing West.
86665 feet, to Sylvester Rinard's tramway.
87120 feet, to the 16½ mile stake.
87245 feet, to a small run, flowing East.
88875 feet, to a small run flowing East.
89760 feet, to the 17th mile stake.
91580 feet, to a small run, flowing East.
92027 feet, to stake No. 19, on the North side of the road leading from Terra Alta to Snaggy mountain.
92400 feet, to the 17½ mile stake.
93233 feet, to a hub, directly West of Snaggy mountain.
94766 feet, to stake No. 20, on the North side of the county road leading from Terra Alta to Cranesville.
95040 feet, to the 18th mile stake.
97680 feet, to the 18½ mile stake.
97747 feet, to a chestnut stump, marked with 3 brass nails.
100325 feet, to the 19th mile stake, on the North side of the "Old Burchinal Road."
101825.3 feet, to a point established in meridian upon Lee's hill. I carried the line back 37½ feet to the end of 101787.8 feet, and planted a rock level with the surface of the ground, near a property line and fence, marking the rock with a cross in meridian.
102965 feet, to the 19½ mile stake, in a glade.
104465 feet, to Spruce run, flowing East.
105600 feet, to the 20th mile stake, on the South slope of Taylor's hill.

1563

106725.3 feet, to a point in meridian, on Taylor's hill, where I planted a sandstone rock 6 x 8 inches, 2½ feet long. This rock is on a solid foundation, and the top of the rock is 1 foot below the surface of the ground. The hole is filled in with broken stone and a copper bolt, inserted in the rock, is marked with a cross in meridian. The whole is covered with a mound of loose stone and earth.

Witnesses: W. McCulloh Brown, William A. Brown, Reed Wolf, Edmund Jamison, Clay Rodeheaver, James A. Sincell, Harry Ashby, Charles A. Ashby, Hansel Taylor, Andrew Nelson and William H. Kitzmiller, Jr.

108240 feet, to the 20½ mile stake.

108485 feet, to stake No. 22, standing on the North side of Gregg's knob road, leading to the Cranesville road.

108705 feet, to Cupp's run, flowing East.

110880 feet, to the 21st. mile stake, in Emanuel Metheny's meadow.

111380 feet, to Hoye's run, flowing East.

111750 feet, to stake No. 23, standing on the north side of a county road.

113520 feet, to the 21½ mile stake.

116160 feet, to the 22nd. mile stake.

118800 feet, to the 22½ mile stake, in oak woods.

119590 feet, to stake No. 24, on the North side of road leading from Cranesville to Terra Alta.

121440 feet, to the 23rd. mile stake in M. Albright's meadow.

121490 feet, to stake No. 25, on the North side of road leading from Cranesville to Henry.

123828.1 feet, to hub. Third tie line.

1564

123828.5 feet, to hub in meridian.

124080 feet, to the 23½ mile stake.

125220 feet, to stake No. 26, on the North side of Pine Swamp Knob road.

126720 feet, to the 24th. mile stake, near a barn on Fike's hill.

127201.8 feet, to a point established in meridian, upon the South face of Fike's hill.

128378.2 feet, to a copper bolt inserted in a natural rock on Fike's hill, and the cross on the bolt is in meridian.

129074 feet, to a copper bolt planted in a large natural rock, and the cross on the bolt is in meridian.

129360 feet, to the 24½ mile stake, on the North brow of Fike's hill, near a long ledge of rock.

132000 feet, to the 25th. mile stake, near a path.

134640 feet, to the 25½ mile stake.

136400 feet, to a tram-road.

137280 feet, to the 26th. mile stake.

139190 feet, to Beaver creek, flowing West.

139920 feet, to the 26½ mile stake.

142560 feet, to the 27th. mile stake, near the road leading from Hazelton to Cranesville.

142700 feet, to stake No. 27, on the North side of the Hazelton and Cranesville road. At this point we set a copper bolt in a natural ledge of rock, marking a cross on the bolt, in meridian.

Witnesses: W. McCulloh Brown, Edmund Jamison, Harry Ashby and Clay Rodeheaver.

145200 feet, to 27½ mile stake, in a cleared field.

1565

145300 feet, to stake No. 28, on North side of road leading to Friendsville.

146037.2 feet, to a point on Rodeheaver hill in meridian; at this point we set a rock, 5 x 6 inches, 2½ feet long, the top of the rock being 1 foot under the surface of the ground, and inserted a copper bolt, with a cross in meridian. This rock is in a cleared field, near a small graveyard.

The following references were taken to trees in said graveyard, viz:

38½ feet to the North cherry tree.

48 feet to a small cedar.

25.2 feet to South cherry tree.

Witnesses: W. McCulloh Brown, Edmund Jamison, Harry Ashby and Clay Rodeheaver.

147480 feet, to the 28th. mile stake, in a cleared field.

150480 feet, to the 28½ mile stake, near Simon Garner's.

151150 feet, to stake No. 29, on the North side of the county road.

153120 feet, to the 29th. mile stake, in oak woods.

154475 feet, to a branch of Mill run, flowing West.

154935 feet, to another branch of Mill run, flowing West.

155760 feet, to the 29½ mile stake.

156600 feet, to the small run, flowing West.

158000 feet, to a small run, flowing West.

158400 feet, to the 30th. mile stake, near James Modispaw's house.

158894 feet, to stake No. 30, on North side of road leading from Hazleton to Friendsville.

159271.3 feet, to hub. Fifth tie line.

159278 feet, to a hub on William Arthur's hill.

1566

160910 feet, to a small run, flowing West.

161040 feet, to the 30½ mile stake.

162300 feet, to the top of Spiker's hill.

163680 feet, to the 31st. mile stake, near the top of a cleared hill on Marshal Spurgeon's land.

165040 feet, to a small run, flowing West.

166320 feet, to the 31½ mile stake.

167730 feet, to a branch of Laurel run, flowing West.

167775 feet, to another branch of Laurel run, flowing West.

168960 feet, to the 32nd. mile stake.

170175 feet, to stake No. 31, on the North side of the county road leading to Friendsville.

171600 feet, to the 32½ mile stake, in Spurgeon's field.
171750 feet, to a small run, flowing West.
173565 feet, to stake No. 32, on the North side of county road leading from Robinson's to Frazee's.
174068 feet, to a small run, flowing West.
174240 feet, to the 33rd. mile stake, in Robinson's meadow.
175100 feet, to stake No. 33, on the North side of the Markleysburg road.
175119 feet, to a point established in meridian, upon Robinson's hill. At this point we planted a rock, 8 x 10 inches and 32 inches long; the top, of which, is one foot below the surface of the ground. A copper bolt was inserted, marked with a cross in meridian.
Witnesses: W. McCulloh Brown, Charles A. Ashby, Arthur S. Abernathy, James A. Sincell, Reed Wolf, Andrew Nelson, William H. Kitzmiller, Jr., Clay Rodeheaver, Harry Ashby.

1567 The following references were also taken a backsight being first taken on the signal station of Fike's hill, and the angle measured from the meridian, to the following points by the transit:
Frazee's brick house, 1° 25′ West of South.
Tower of church at Glade Farms, 62° 18′ West of North.
East gable of Edward Cuppett's house, 9° 13′ West of North.
South gable of Rosenburg's house, 0° 41′ East of North.
West gable of Spurgeon's house, 15° 35′ East of North.
Chimney at East corner of Joseph Miller's house, 85° 05′ East of North.
176880 feet, to the 33½ mile stake, in Spurgeon's cleared field.
178900 feet, to a small run, flowing West.
179250 feet, to stake No. 34, upon the North side of the Mud pike.
179520 feet, to the 34th. mile stake.
180200 feet, to a small run, flowing West.
181385 feet, to stake No. 35, on the North side of the road leading from Five Forks to Mud Pike.
182140 feet, to the stump of an apple tree, into which we drove a large iron spike, the same being in meridian.
182160 feet, to the 34½ mile stake, in A. R. Cuppett's orchard.
182515.4 feet, to a point established in meridian, on the top of A. R. Cuppett's hill. At this point we planted a stone 4 x 6 inches, and 28 inches long. The top of this stone is 8 inches below the surface of the ground. We drilled a hole in the top of the stone, 1 inch in depth, and put a loose bolt therein.

1568 The following references were taken from the meridian, the angles being measured with the transit.
Apple tree stump, South.
Chestnut tree, 21° 55′ West of South.
Pin oak, in fence corner, 46° 26′ West of South.
Chestnut tree, 31° 25′ West of North.
A double chestnut tree, 4° 40′ East of North.
West gable of a white house in the glade, 25° 19′ East of North.
A cherry tree, 51° 03′ East of North.

Witnesses: W. McCulloh Brown and Charles A. Ashby.
183070.45 feet, to the "Mason and Dixon Line."
183079.7 feet. At this point we planted a stone about 6 x 6 inches, projecting 6 inches above the ground, marking the top thereof, in the line of the meridian.

Summary of Points in "Brown-Bauer Meridian," Marked by Sub-surface Stones and Marks.

1st. "Potomac Stone," which is 11 feet North of "Potomac Spring."
2nd. Top of Backbone mountain.
3rd. Rembold's hill.
4th. Bush's hill.
5th. Northwestern Pike.
6th. Foley's mountain.
7th. De Berry's hill.
1569 8th. Lee's hill.
9th. Taylor's hill.
10th. Fike's hill, marked at 3 different points.
11th. Hazleton road.
12th. Rodeheaver hill.
13th. Robinson's hill.
14th. Cuppett's hill.
15th. 9.25 feet, North of "Mason and Dixon Line."

Bauer-Michler Meridian.

The meridian line from the "Fairfax Stone" as run by Dr. L. A. Bauer was marked in meridian, by means of large wooden hubs, with a brass nail in the center of each hub.

References to the monuments or marks, as made by Lieut. Michler, were taken when possible. In many cases, I subsequently replaced the hubs left by Dr. Bauer, with permanent sub-surface stones, and signal poles with flags were erected over these marked points.

In several instances, I ran sections of the "Bauer-Michler Line" between the above points in meridian, for reference, in connection with check work upon other lines and land surveys.

Full notes of the running of this meridian will be found in Dr. Bauer's report, hereto annexed.

Summary of Points Marked Upon the "Fairfax" or "Bauer-Michler Meridian."

1570
1st. "Fairfax Stone."
2nd. Arnold's ridge.
3rd. Backbone mountain.
4th. Northwestern Turnpike.
5th. Stahl's hill.
6th. Ashby's hill.
7th. Lauer hill.

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8th. Hill, North of B. & O. Railroad, near old State road.
9th. Snaggy mountain.
10th. Hill near Cranesville.
11th. Fike's hill.
12th. Owen's hill.
13th. Sickle's hill.
14th. Mason and Dixon Line.
15th. Point in meridian, 274.2 feet, North, in Pennsylvania.

Determination of Distance Between "Brown-Bauer" and "Bauer-Michler" Meridians.

For the purpose of making this determination, the station upon Rembold's hill, on the "Brown-Bauer Meridian," was selected, as it afforded a favorable location for measuring a base line for triangulation, and also a point from which the station on the "Bauer-Michler Meridian," on the summit of the Backbone mountain could easily be seen and also occupied as a triangulation station.

This work was most carefully done, and the perpendicular
1571 distance, between the station on Rembold's hill and a point in the "Bauer-Michler Meridian" opposite, was found to be 5977.1 feet.

Details of the work will be found in Dr. Bauer's report. As the two meridians are true North and South lines, they will continue to approach each other as they proceed North, owing to the rotundity of the Earth, and in the present case, at the computed rate of 1.229 feet per mile, the angle of convergence being 48″ and may be considered as constant for the entire line, and as the two meridians are so close to each other, the perpendicular distance between them may be regarded as the distance along a parallel of latitude.

Knowing the distance South from Rembold's hill to "Potomac Stone," it was computed that the perpendicular distance between the two meridians at "Potomac Stone," is 5981.1 feet.

These figures are adopted as the initial distance between the meridians. Those obtained by me, from the survey of the streams &c., above given, having been worked out under most unfavorable conditions, owing to the roughness of the ground and the great number of stations occupied. The computed distance between the two meridians at the "Mason and Dixon Line" was 5938.68 feet, while, as measured by Mr. Ashby and myself, it was 5940.3 feet, a most satisfactory result, considering the many conditions entering into the work.

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That the change in the direction of the magnetic needle, along the meridian lines, as they proceed North is considerable, can be seen by the carefully verified values for Magnetic Declination, obtained by Dr. Bauer at various points as follows:

Bauer-Michler meridian.

Station.	Observation. 1897.	Declination.
Fairfax Stone 465 ft. N.	August 4/6″	3° 05′ 2″ W.
Backbone Mountain	August 22/23 and 28″	3° 07′ 4″
Lauer hill	Sept. 25″	3° 16′ 7″
Snaggy Mountain	Sept. 28/29″	3° 37′ 2″
Fike's hill	Oct. 8″	3° 40′ 3″
M & D Line 274.2 ft. N.	Oct. 16″	3° 47′ 5″

Brown-Bauer meridian.

Station.	Observation. 1897.	Declination.
Taylor Hill	Sept. 30″	3° 31′ 7″
Fike's hill	Oct. 13	3° 40′ 4″

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1573 Perpendiculars from Brown-Bauer Meridian.

For the purpose of locating the several check stations, reference lines, land tracts and Military Lots, hereinafter mentioned and described, it was necessary to run upon the ground certain sections of the "Bauer-Michler Meridian," and to have points upon it established, whose relation to the "Potomac Spring" was known, and this was accomplished by running perpendiculars from stations on the 'Brown-Bauer Meridian."

In locating all points upon the plats, their latitude and departure, in reference to the "Potomac Spring," which is 11 feet due South of "Potomac Stone," is given.

Five of these perpendiculars, with corresponding points in the two meridians, were established as follows:

1st. From Station upon Rembold's hill, which is 17753.3 feet North of Potomac Spring, the corresponding point upon the "Bauer-Michler Meridian" was found, by triangulation, to be 5977.1 feet East of the "Brown-Bauer Meridian," and the station upon the Backbone mountain was found to be 7924 feet North of "Potomac Spring," and 5978.8 feet, East.

2nd. The second perpendicular was run from the "Brown-Bauer Meridian," from a station in the same, 37888.6 feet North of "Potomac Spring," to a hub in the "Bauer-Michler Meridian," near the Michler monument on the North side of the Northwestern Pike. This hub is designated X. G. on the plats. From hub X. G., the "Bauer-Michler Meridian" was run South, by actual survey
1574 upon the ground, to Dawson's hill, and then extended North as far as Ashby's hill, references being taken from the meridian, thus run, to the Monroe Line, the Military Lots and the several land tracts.

3rd. The third perpendicular, North of the Baltimore and Ohio Railroad, was run from the *a* station on the "Brown-Bauer Meridian," 77947.5 feet North of "Potomac Spring" to hub designated upon the plats X. N., in the "Bauer-Michler Meridian," whose departure is 5963 feet. The "Bauer-Michler Meridian" was then run South 285 feet from said station, to a point where we planted a rock, designated upon the plats as "Rock C," and from said point "Rock C," the meridian was prolonged North for more than a mile, and references were taken from it to the "Monroe Line" and the land tracts.

4th. The fourth perpendicular, North of Cranesville, was run from a station in the "Brown-Bauer Meridian," 123828.5 feet North of "Potomac Spring" to hub designated X. R. upon the plats, in the "Bauer-Michler Meridian" the departure of which is 5952.3 feet East. We then ran South 379.5 feet in meridian, planting a rock, designated upon the plats "Rock D," the latitude of which is 123449 feet, and the departure, 5952.3 feet.

We then prolonged the meridian North from "Rock D," for more than a mile to hub designated X. S. upon the plats, in the "Bauer-Michler Meridian," the latitude of hub X. S. being 129436.2 feet, and the departure, 5951.1 feet East.

5th. The fifth perpendicular was run from a station on Arthur's hill, which is 159271.3 feet North, of "Potomac Spring," to hub designated "Y" upon the plats, in the "Bauer-Michler Meridian," and the departure of said point is 5944 feet East.

From hub "Y" we ran South upon the meridian for over a
1575 mile, taking references; then returning to hub "Y" we ran North as far as "Sickle's hill," establishing points in meridian for reference.

The two meridians as run from the "Fairfax Stone" and the "Potomac Stone," respectively, are astronomically true North lines, and no line or lines, differing materially from them, can be meridian lines, starting from the same terminii.

Check Lines.

I then by direction of Counsel for the State of Maryland, proceeded to run reference or check lines from the stakes in the "Monroe Line," located by the State of West Virginia, in this cause, in the year, 1894, to the "Bauer-Michler Meridian," and thence to known points in the "Brown-Bauer Meridian," as a means of counter-locating said "Monroe Line," which delimits and marks the pretensions of the State of West Virginia, upon the plats in this cause.

These stakes, from which said check lines were run, were almost universally pointed out to me by Mr. Monroe himself.

Mr. Monroe, being the Surveyor on the part of the State of West Virginia, in this cause, began his line at the "Fairfax Stone" and ran by means of the magnetic needle of the compass, making a constant allowance of 3° 40′ to the East or right for variation, his object being, to reproduce the so-called "Deakins Line," and the bearing of said "Monroe Line" is 3° 40′ East.

Table of Perpendicular Distances of Certain Stakes Set by Mr. Monroe in His Line, to Corresponding Points in the "Bauer-Mich-
1576 *ler Meridian," with Latitude and Departure of said Stakes, as Referred to "Potomac Spring."*

Distance on Monroe line.	Station.	Perpendicular distance.	Latitude.	Departure.
000 feet	Fairfax Stone	000 feet	7168 ft. S.	5982.8 ft. E.
3993.7 "	Potomac River	63.8 "	3148 " "	6045.6 " "
6000 "	Arnold Ridge	83 1 "	1168 " "	6064 5 " "
15092.6 "	Backbone Mt.	207.8 "	7924 " N.	6186.6 " "
31640 "	Six miles	428.3 "		
36960 "	Seven miles	497.8 "		
42240 "	Eight miles	554 2 "	35698 " "	6527 " "
44880 "	Near N. W. Pike	593.1 "	38296 " "	6565.4 " "
48630 "	Offutt's hill	636.1 "	41652 " "	6607 5 " "
51186 "	Stahl's hill	664.3 "	44272 " "	6635.1 " "
58080 "	Eleven miles	751 8 "	51023 " "	6721 " "
84480 "	Sixteen miles	1014 9 "	77674 " "	6977.9 " "
90565 "	Thomas & Ann	1068.5 "	83804 " "	7030.1 " "
105600 "	Twenty miles	1204.7 "	97958 " "	7162 7 " "
120483 "	Elzey	1294 3 "		
129360 "	Cranesville	1327.8 "	122257 " "	7280.4 " "
136801 "	Hazleton Road	1356.3 "	129456 " "	7307.4 " "
163680 "	Thirty one miles	1419 "	156049 " "	7363.8 " "
172753 "	Cherry Hill	1436 "	165215 " "	7378.6 " "
179520 "	Thirty four miles	1449.1 "	172040 " "	7389.9 " "
190438.9 "	Mason & Dixon Line	1462.1 "	183070 " "	7400.8 " "

1577 Deakins' Line.

I further certify and return, that by direction of Counsel for the State of Maryland, I have located and laid down upon the plats, the following points in the so-called "Deakins Line," the same being the only points I have been able to obtain testimony in regard to.

1st. The "Fairfax Stone." This point is referred to by Francis Deakins in the certificate for Military Lot No. 1101, in the following words, to-wit:—"One mile North from a stone fixed by Lord Fairfax for the head of the North Branch of Powtomack River."

2nd. I located a spring in the town of Cranesville, pointed out to me by John P. Lewis, a witness produced upon the ground on behalf of the State of Maryland, and also by Thomas Browning, a witness in the same behalf.

According to the testimony of said witnesses, said "Deakins' Line," ran across the water of said spring.

The latitude of this spring is 122230.7 feet North, and the departure is 4267.6 feet East, of "Potomac Spring"; the perpendicular distance at the same time being 1658 feet West of the "Bauer-Michler Meridian," and said spring is shown and designated upon the plats at black letters, W. J.

The Old Line.

I further certify and return, that by direction of Counsel for the State of Maryland, I have located by actual survey, and laid down upon the plats for illustration, the following points in a sup-
1578 posed "old line," according to the testimony of residents at different points along the same.

1st. A white oak tree, pointed out to me by Lloyd Dawson, a witness produced upon the ground, on behalf of the State of Maryland, as a point in "the old line." This tree was blocked, and the marks in the concentric rings were found to be not much over forty years.

This point is by latitude, 35697 feet North, and by departure, 6121.1 feet East of "Potomac Spring," and the perpendicular distance from the "Bauer-Michler Meridian" being 148.3 feet. This point is designated upon the plats by the black letters W. C.

2nd. A thorn tree stump, pointed out to me by Francis Martin, a witness produced upon the ground on behalf of the State of Maryland, as a point in "the old line," which stump stands on the East side of the road leading from Oakland to Aurora.

This point is by latitude, 38151.4 feet North, and by departure, 6137.9 feet East of "Potomac Spring," and the perpendicular distance East from the "Bauer-Michler Meridian" is 165.6 feet. This point is designated upon the plats by the black letters, W. D.

3rd. A fence, pointed out to me by Peter F. Nine, a witness produced upon the ground on behalf of the State of Maryland, as a point in "the old line." This point is by latitude, 42276 feet North, and by departure, 6190.2 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian," being 219 feet.

Said fence is shown upon the plats and designated by the black letters, W. E.

4th. A white oak tree, pointed out to me by Julius K. Monroe, standing on Stahl's hill, and shown upon the plats at black letters, W. F.

This point is by latitude, 44420 feet North, and by de-
1579 parture, 6230.5 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian," being 259.7 feet.

5th. A fence, pointed out to me by J. W. Jones, a witness produced upon the ground on behalf of the State of Maryland, as being a point in "the old line," and shown upon the plats at the black letters, W. G.

This point is by latitude, 77686.8 feet North, and by departure, 7091.4 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian" being, 1128.4 feet.

6th. A cherry tree, pointed out to me by Samuel Teets, a witness produced upon the ground on behalf of the State of Maryland, as being a point in "the old line," and said point is shown upon the plat at the black letters, W. H.

The perpendicular distance of the said point East of the "Bauer-Michler Meridian," is 1547 feet.

7th. A point where a red oak tree formerly stood, pointed out to me by Ethbell Falgenstine, a witness produced upon the ground on behalf of the State of Maryland, as a point in "the old line," and shown upon the plats at the black letters, W. K.

This point is by latitude, 128896 feet North, and by departure, 8446.8 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian" being 2495.6 feet.

8th. The remains of an old fence, pointed out to me by Taylor Friend, a witness produced upon the ground on behalf of the State of Maryland, as a point in "the old line," and is shown upon the plats at the black letters, W. J.

This point is by latitude, 160787.5 feet North, and by departure, 8920.6 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian" being 2976 feet.

1580 9th. A fence, pointed out to me by Isaac Myers, a witness produced upon the ground on behalf of the State of Maryland, as being a point in "the old line," and is shown upon the plats at the black letters, W. L.

This point is by latitude, 164716.8 feet North, and by departure, 8913.8 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian," being 2971.1 feet.

10th. A fence, pointed out to me by Samuel M. Fike, a witness produced upon the ground on behalf of the State of Maryland, as being a point in "the old line," and is shown upon the plats at the black letters, W. M.

This point is by latitude, 172549.7 feet North, and by departure, 8909.2 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian," being 2957.5 feet.

11th. An old mound, in the Mason and Dixon Line, pointed out to me by Abram. J. Thomas, a witness produced upon the ground on behalf of the State of Maryland, as being a point in "the old line,"

and which said point is shown upon the plats at the black letters, W. Z.

This point is by latitude, 183079.7 feet North, and by departure, 8910.9 feet East of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian," being 2970.6 feet.

Location of Land Tracts.

I further certify and return, that by direction of Counsel for the State of Maryland, I located by actual survey, a tract of land called "The Royal Charlotte," containing the quantity of 2000
1581 acres, originally, on the 12th. day of April, A. D. 1774, surveyed for Samuel Chase, by virtue of part of a Special Warrant for 2000 acres and 520 acres, part of a Common Warrant for 1500 acres, both granted him out of the proprietary's Land Office of the Colony of Maryland, according to the Conditions of Plantation, on the 25th. day of March, A. D. 1774, said tract of land having been patented by the State of Maryland on the 14th. day of May, A. D. 1787, to Thomas Hall.

I began the location of said tract at an anciently bounded white oak tree, pointed out to me by Jacob P. Gauer, a witness produced upon the ground on behalf of the State of Maryland, as the beginning tree of the said tract called "The Royal Charlotte," said tree also standing at the end of the eighth line of "His Lordship's Manor on the Youghiogheny River," and ran thence,

1st. North 26° East, 882 perches, corrected to 884 perches, to a planted stone, marked L. P., pointed out by Solomon Yutzy, a witness produced upon the ground on behalf of the State of Maryland, as at the end of the first line of "The Royal Charlotte," thence,

2nd. North 64° West, 355 perches, thence,

3rd. South 26° West, 944 perches. At the end of 42 perches on this line, I located the end of the first line of Military Lot No. 317, setting a stake. At the end of 122 perches on the 3rd. line of said tract, I located the beginnings of Military Lots, Nos. 316 and 317, and planted a stake at said point, and at the end of 324 perches on said line, I located the end of the first line of Military Lot No. 316, and planted a stake at said point. At the end of 451½ perches, said 3rd. line crosses the "Bauer-Michler Meridian," hereinbefore referred to, and I set a stake
1582 at the said point of intersection. At the end of said 3rd. line of "The Royal Charlotte," I planted a stake in an open field, and ran thence,

4th. By a straight line to the beginning.

Said tract of land was located according to its original courses, distances and calls, as contained in the certificate of survey and Patent therefor, and is shown upon the plats by solid black lines, numbered with black figures, from 1 to 4, both inclusive, and designated, "The Royal Charlotte," within said lines.

In locating this tract upon the ground, an allowance, of 4° 10′ to the right was made, for magnetic variation.

"The Royal Charlotte," is located upon the plats from the intersection of its 3rd. line, at the end of 451½ perches, with the "Bauer-Michler Meridian," at a stake, which is by latitude, 40412.6 feet North of "Potomac Spring," and by departure, 5971.7 feet East, and its beginning is shown at black A on the plats.

NOTE.—In platting this and all subsequent tracts, an allowance was made for the change in magnetic declination between the Southern and Northern ends of the Meridian Lines, which was found to be 0° 40′ 30″ and therefore these tracts, as put down upon the plats, are in their true relation to the Meridian Lines.

The Promised Land.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the first three lines of the tract of land called,
"The Promised Land," according to its original courses, dis-
1583 tances and calls, as contained in the certificate of survey and
Patent therefor, originally surveyed for James Brooks on the 11th. day of April, A. D. 1774, by virtue of part of a Special Warrant for 6000 acres granted him out of the Proprietary's Land Office of the Colony of Maryland on the 25th. day of March, A. D. 1774, according to the Conditions of Plantation then in force; said tract having been patented to Thomas Johnson on the 6th day of December, A. D. 1786, containing 1200 acres.

I began the location of said tract at a black oak stump, standing between two anciently bounded trees, on the Northeast slope of a hill, and said trees and stump were pointed out to me as the original beginning of "The Promised Land," by John Harned, a witness produced upon the ground on behalf of the State of Maryland, and ran thence,

1st. North 40 perches, thence,
2nd. West, 253 perches, thence,
3rd. South, 400 perches, to a planted stone corner, standing at the end of said 3rd. line of "The Promised Land," it being also the beginning of a tract of land called "Kindness."

The remaining lines, of said tract called "The Promised Land," are laid down upon the plats by protraction for illustration. Said tract is shown upon the plats by solid black lines, to the end of its 3rd line, and the remaining lines thereof are shown by black broken lines and numbered with black figures from 1 to 6 both inclusive, and within said lines is designated "The Promised Land."

The beginning of said tract is shown at black B on the plats. In locating this tract upon the ground, an allowance of 4° 05′ to the right was made for magnetic variation.

1584 "The Promised Land" is located upon the plats from the end of its third line, which is also the beginning of "Kindness," and from the point in the "Bauer-Michler Meridian" desig-

nated as Rock C on the plats, which is by latitude, 77662.5 feet North of "Potomac Spring," and by departure, 5963.1 feet East.

From Rock C, I ran a traverse line as follows:—

1st North 89° 21′ East, 1015 feet,
2nd. South 49° 17′ East, 2254.8 feet,
3rd. South 52° 01′ West, 566 feet to the planted rock at the end of the 3rd. line of "The Promised Land," it being also the beginning of the tract called "Kindness," and designated upon the plats at black C.

Kindness.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the first three and part of the fourth lines of the tract of land called "Kindness," according to its original courses, distances and calls, as contained in the certificate of survey and Patent therefor, originally surveyed for Baker Johnson on the 22nd. day of April, A. D. 1774, by virtue of 1900 acres, part of a Special Warrant for 6000 acres, granted him out of the Proprietary's Land Office of the Colony of Maryland, according to the Conditions of Plantation, then in force, and patented to the said Baker Johnson, on the 23rd. day of October, A. D. 1793, by the State of Maryland, containing 2072 acres.

I began the location of said tract at a planted stone, found by actual survey to stand at the end of the 3rd. line of the tract
1585 of land called "The Promised Land," the original beginning of said tract called "Kindness," and ran thence,

1st. North, 98 perches, thence,
2nd. North 76° West, 160 perches. At the end of 143 perches and 3 links, this line crosses the "Bauer-Michler Meridian."
3rd. South, 407 perches. At the end of 211 perches, this line crosses the tracks of the Baltimore and Ohio Railroad, and at the end of 310 perches, it crosses Snowy Creek.
4th. South 29° East, 319 perches. At the end of 44 perches and 22 links, this line crosses the "Bauer-Michler Meridian."

The remaining lines of the said tract called "Kindness" are laid down upon the plats by protraction for illustration.

Said tract of land is shown upon the plats by solid black lines to the end of the 4th. line thereof, and by broken black lines and the lines thereof are numbered from 1 to 10, both inclusive, with black figures, and the tract is designated "Kindness" within said lines, and its beginning is shown at black C upon the plats.

In locating this tract upon the ground, an allowance of 4° 05′ to the right was used for magnetic variation.

The beginning of "Kindness" is located upon the plats, as above described, at the end of the 3rd. line of "The Promised Land."

1586 Thomas and Ann.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the beginning and the first six lines of a tract of

land called "Thomas and Ann," according to its original courses, distances and calls, as contained in the certificate of survey and Patent therefor, originally surveyed for Thomas Johnson, by virtue of a Special Warrant for 2000 acres granted him out of the Proprietary's Land Office of the Colony of Maryland, on the 25th day of March, A. D. 1774, according to the Conditions of Plantation then in force, and patented to the said Thomas Johnson on the 6th. day of December, A. D. 1786, by the State of Maryland, containing 2000 acres.

I began the location of said tract at a stone marked R. O., standing between three white oak trees, which are anciently bounded and were pointed out to me by Daniel McRobie and Edmund Jamison, witnesses produced upon the ground on behalf of the State of Maryland, as the original beginning of said tract called "Thomas and Ann," and ran thence,

1st. North 85° West, 120 perches, thence,
2nd. North 27° West, 85 perches, and planted a stake; thence,
3rd. South 28° West, 601 perches, and planted a stake; at the end of 120 perches on this line I planted a stake at the beginning of Military Lot No. 1240, shown upon the plats at black L.

At the end of 322 perches on said 3rd. line, I planted a stake at the end of the 1st line of said Military Lot No. 1240.

1587

At the end of 327 perches on said 3rd. line, I planted a stake at the beginning of Military Lot No. 1237, shown at black K, on the plat.

At the end of 531 perches on said 3rd. line, I planted a stake at the end of the 1st. line of Military Lot No. 1237, shown upon the plats at black T.

4th. South 82° West, 169 perches, and planted a stake; at the end of 37 perches and 22 links, said 4th. line crosses the "Bauer-Michler Meridian."
5th. South 12° 30′ West, 217 perches, thence,
6th. South 76° East, 320 perches, and planted a stake; and at the end of 185 perches and 20 links, on said 6th. line, we crossed the "Bauer-Michler Meridian."

The four remaining lines of said tract called "Thomas and Ann" are laid down upon the plats by protraction for illustration, and said tract of land is shown upon the plats by solid black lines to the end of the 6th. line thereof, and the remaining lines are shown by black broken lines, and the lines thereof are numbered with black figures from 1 to 10, both inclusive, and within said lines said tract is designated, Thomas and Ann. Its beginning is shown upon the plats at black D.

In locating this tract, an allowance of 4° 05′ to the right was used for magnetic variation.

1588 The tract "Thomas and Ann" is located upon the plats from the end of 190 perches and 5 links on the 6th. line of said tract, where it intersects the "Bauer-Michler Meridian," the stake set at this intersection being by latitude, 78220.5 feet North, and by departure 5963 feet East from "Potomac Spring."

The Diadem.

I then, by direction of Counsel for the State of Maryland located by actual survey, a tract of land called "The Diadem," according to its original courses, distances and calls, as contained in the certificate of survey and Patent therefor, originally surveyed for Robert Smith on the 11th. day of April, A. D. 1774, by virtue of a Special Warrant for 4000 acres granted him out of the Proprietary's Land Office of the Colony of Maryland, according to the Conditions of Plantation then in force, on the 25th. day of March, A. D. 1774, and patented to George Robbins Hayward and Thomas Hayward, as tenants in common, by the State of Maryland on the 3rd. day of December, A. D. 1791, containing 1691 acres.

I began the location of said tract of land at a planted stone, standing in a meadow, the same being pointed out to me as the place where two bounded wild cherry trees formerly stood, the original beginning of said tract called "The Diadem," by John E. Otto and John P. Lewis, witnesses produced upon the ground on behalf of the State of Maryland, and ran thence.

1st. North 60° East, 267 perches, thence,
2nd. North 10° East, 122 perches, and planted a stake, this point be-
1589 ing also the beginning of Military Lot No. 1447, shown upon the plats at black M, thence,
3rd. North 61° West, 218 perches, to a large rock; thence,
4th. South 83° West, 237 perches; at the end of 181 perches and 19 links on said 4th. line, we crossed the "Bauer-Michler Meridian.
5th. South 52° West, 300 perches, thence,
6th. South 84° West, 186 perches, and planted a stake; at the end of 68½ perches on said 6th. line, we crossed the "Brown-Bauer Meridian," said point being marked by a planted stake, thence
7th. South 34° West, 254 perches, thence,
8th. East, 780 perches. At the end of 261 perches and 23 links on said 8th. line, we crossed the "Brown-Bauer Meridian," and at the end of 623 perches, said 8th. line crosses the "Bauer-Michler Meridian," thence,
9th. By a straight line to the beginning.

In locating this tract, on allowance of 4° 05′ to the right was made for magnetic variation. Said tract is shown upon the plats by solid black lines to the end of the 8th. line thereof, and the remaining line is shown by a broken black line, and the lines are numbered with black figures from 1 to 9, both inclusive, and the tract is desig-
1590 nated "The Diadem" within said lines, the beginning being shown upon the plats at black E.

The tract, "The Diadem" is located upon the plats from a point in the "Bauer-Michler Meridian" designated as Hub E, in black, which by latitude is 122510 feet North, and by departure, 5952.6 feet East of "Potomac Spring."

From Hub E I ran a traverse line,
North 71° 20′ East 2017 feet, to the planted rock, the beginning of "The Diadem."

Elder Spring.

I then, by direction of Counsel for the State of Maryland, located by actual survey, a tract of land called "Elder Spring," according to its original courses, distances and calls, as contained in the certificate of survey and patent therefor, originally surveyed for William Deakins, Jr., on the 26th day of April, A. D. 1774, by virtue of so much part of a Warrant for 1818 acres, granted him out of the Proprietary's Land Office of the Colony of Maryland, the 26th day of March, A. D. 1774, according to the conditions of Plantation then in force, and patented to Francis Deakins the 25th day of February, A. D. 1786, by the State of Maryland, containing 411 acres.

I began the location of said tract at an anciently bounded black gum tree and a rotten white oak stump, pointed out to me by Samuel Fortner, a witness produced upon the ground on behalf of the State of Maryland, as the original beginning of the said "Elder
1591 Spring" tract, and ran thence,

1st. North 6° East, 146 perches, thence,
2nd. North 20° West, 80 perches, thence,
3rd. North 7° East, 173 perches, corrected to 173½ perches to a stake and stone pile, pointed out to me by Julius K. Monroe, Surveyor on the part of the State of West Virginia in this cause, as at the acknowledged end of the 3rd. line of the "Elder Spring" tract, thence,
4th. West, 100 perches, to a stake and stone pile, pointed out to me by Zalmon Cuppett, a witness produced upon the ground on behalf of the State of Maryland, as the acknowledged end of the 4th. line of said "Elder Spring" tract; at the end of 73 perches and 22 links, said 4th. line crosses the "Bauer-Michler Meridian," thence,
5th. South 67° West, 60 perches, thence,
6th. South 25° West, 80 perches, thence,
7th. South 32° East, 40 perches, thence,
8th. South 48° East, 98 perches, thence,
9th. South, 20 perches, thence,
10th. South 38° West, 82 perches, thence,
11th. South 8° West, 30 perches, thence,

1592

12. South 42° East, 40 perches, thence,
13th. South 10° West, 147 perches, thence,
14th. South 51° East, 56 perches, thence,
15th. North 77° East, 80 perches. At the end of 38 perches and 20 links, said 15th line crosses the "Bauer-Michler Meridian."
16th. North 41° East, 40 perches, thence,
17th. By a straight line to the beginning.

In locating this tract, an allowance of 4° to the right was used for magnetic variation. The said tract is shown upon the plats by solid black lines to the end of the 16th line, and the remaining line is shown by a broken black line. The lines are numbered with black figures from 1 to 17, both inclusive, and the tract is designated

"Elder Spring," within said lines, the beginning thereof being shown upon the plats at black F.

"Elder Spring" is located upon the plats from the end of its 4th line, and from a hub in the "Bauer-Michler Meridian," the latitude of which is 155707 feet North, and departure, 5944.8 feet, East, of "Potomac Spring." I then ran a traverse line from the last above mentioned hub

South 86° 47′ West, 497.7 feet, to the end of said 4th line of "Elder Spring."

Cherry Hill.

I then, by direction of Counsel for the State of Maryland, located by actual survey a tract of land called "Cherry Hill," according to its original courses, distances and calls, as contained in the
1593 certificate of survey and Patent therefor, originally surveyed for Brooke Beall, on the 25th day of April, A. D. 1774, by virtue of so much part of a Warrant for 434½ acres, granted him out of the Proprietary's Land Office of the Colony of Maryland, according to the Conditions of Plantation then in force, on the 30th day of March, A. D. 1774, and patented to William Deakins, Jr., by the State of Maryland, on the 15th day of February, A. D. 1786, containing 384 acres.

I began the location of said tract of land at an anciently bounded ash tree standing on the East slope of a hill, said tree being pointed out to me by Taylor Friend, a witness produced upon the ground on behalf of the State of Maryland, as the original beginning of said tract called "Cherry Hill," and ran thence,

1st. South 80° East, 100 perches, and planted a stake. At the end of 34 perches on said 1st line, I planted a stake at the beginning of Military Lot No. 2952, said stake being shown upon the plats at black O.
2nd. South 30° East, 60 perches, thence,
3rd. East, 73 perches. At the end of 65 perches on said 3rd line it crosses Buffalo Run.
4th. North, 68 perches. At the end of 13 perches, and again at 16 perches and also at the end of 24 perches said 4th line crosses Buffalo Run.
5th. North 68° West, 176 perches, thence,
6th. South 80° West, 100 perches, thence,
7th. South 53° West, 72 perches, thence,

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8th. South 4° West, 28 perches, thence,
9th. South 46° West, 54 perches, thence,
10th. West, 120 perches. At the end of 26 perches and 16 links, said 10th line crosses the "Bauer-Michler Meridian."
11th. South 12° West, 86 perches, thence,
12th. South 67° East, 80 perches, thence,
13th. South, 50 perches, thence,
14th. South 29° East, 64 perches, thence,

15th. North 71° East, 100 perches. At the end of 24 perches, said 15th line crosses the "Bauer-Michler Meridian."
16th. North 16° East, 134 perches, thence,
17th. By a straight line to the beginning.

In locating this tract upon the ground, an allowance of 4° 05′ to the right was made for magnetic variation.

Said tract is shown upon the plats by solid black lines to the end of the 16th line thereof, and the remaining line by a broken black line. The lines thereof are numbered with black figures from 1 to 17, both inclusive, and the tract is designated "Cherry Hill" within said lines.

The beginning of "Cherry Hill" is located upon the plats from hub X in the "Bauer-Michler Meridian," and said beginning is shown upon the plats at black G.

The latitude of hub X is 159902 feet North, and the departure, 5943.8 feet East of "Potomac Spring."

From hub X, I ran a traverse line as follows:

1st. North 89° 54′ East, 1948.7 feet,

1595

2nd. North 00° 06′ West, 880.3 feet,
3rd. North 89° 54′ East, 1124.1 feet,
4th. South 00° 06′ East, 779.8 feet, to the beginning of "Cherry Hill." The point at hub X is shown up- the plats at hub X, in black.

The Granary.

I then, by direction of Counsel for the State of Maryland, located by actual survey the first five lines of a tract of land called "The Granary," according to their original courses, distances and calls, as contained in the certificate of survey and Patent therefor, originally surveyed for George French on the 25th. day of April, A. D. 1774, by virtue of so much part of a Special Warrant for 490½ acres granted him out of the Proprietary's Land Office of the Colony of Maryland, according to the Conditions of Plantation then in force, on the 12th. day of March, A. D. 1774, and patented to Charles Peale Polk and Raphael Peale by the State of Maryland, on the 10th. day of January, A. D. 1788, containing 331½ acres.

I began the location of said tract of land at a planted stone, pointed out to me by Isaac Myers, a witness produced upon the ground on behalf of the State of Maryland, as standing at the place where a bounded white oak tree formerly stood, the original beginning of said tract called "The Granary," said point being near a spring drain at the head of a hollow, and ran thence,

1st. South 30° East, 40 perches, to a bounded white oak tree, at the end of said 1st. line, thence,

1596

2nd. South 26° West, 43 perches, thence,
3rd. South 80° West, 196 perches, thence,
4th. North, 94 perches, thence,
5th. Northeast, 358 perches.

The remaining lines of said tract, I have laid down upon the plats by protraction for illustration.

In locating this tract upon the ground, an allowance of 4° 05′ to the right was made for magnetic variation.

This tract is shown upon the plats by solid black lines to the end of the 5th. line thereof, and the remaining lines are shown by broken black lines. The lines are numbered with black figures from 1 to 8, both inclusive, and the tract is designated, "The Granary," within said lines, and its beginning is shown upon the plats at black H.

The beginning of "The Granary" is located upon the plats from a hub designated upon the plats as hub A, in the "Bauer-Michler Meridian," the latitude of said Hub A being 165215.5 feet North, and its departure, 5942.7 feet East of "Potomac Spring."

From Hub A, I ran the following traverse lines, viz:—

1st. East, 1436 feet,
2nd. South 71° 56′ East, 1516 feet,
3rd. North 87° 42′ East, 1069.5 feet,
4th. North 61° 24′ East, 1255 feet,
5th. North 28° 36′ West, 9 feet, to the planted rock, the beginning of "The Granary."

Military Lot No. 316.

I further certify and return, that by direction of Counsel for the State of Maryland, I then located by actual survey, the begin-
1597 ning and the first line of Military Lot No. 316, according to its original courses, distances and calls, as contained in the Certificate of Award therefor, as follows:

I began the survey of said Military Lot at a stake standing at the end of 122 perches on the 3rd. line of a tract of land called "The Royal Charlotte," hereinbefore mentioned, said point being the original beginning of said Military Lot No. 316, shown upon the plats at black I, and ran thence, with said 3rd. line,

South 26° West, 202 perches, to a stake at the end of 324 perches on said 3rd. line of "The Royal Charlotte," which point is shown upon the plats at black S.

The remaining lines of said Military Lot are laid down upon the plats by protraction for illustration, as follows:

2nd. North, 180 perches,
3rd. By a straight line to the beginning.

The first line of said Military Lot is shown upon the plats by a solid black line, and the remaining lines by broken black lines said lines being numbered with black figures from 1 to 3, both inclusive, and said Military Lot is designated "Lot 316" within said lines. Said Military Lot is located upon the plats as called for, on the 3rd. line of "The Royal Charlotte"; the end of its first line, as shown at black S, being by latitude, 42276 feet North, and by departure, 6924.1 feet East of "Potomac Spring," and being at the same time 952.8 feet East of the "Bauer-Michler Meridian."

1598 Military Lot No. 317.

I then, by direction of Counsel for the State of Maryland, located by actual survey the beginning and 1st. line of Military Lot No. 317, according to its original courses, distances and calls, as contained in the Certificate of Award therefor, as follows:

I began the location of said Military Lot at a stake at the end of 122 perches on the 3rd. line of a tract of land called "The Royal Charlotte," hereinbefore referred to, it being also the beginning of Military Lot No. 316, and ran thence,

1st. With the 3rd. line of "The Royal Charlotte," reversed, North 26° East, 80 perches, to a stake, which point is shown upon the plats at black J, and the remaining lines are laid down by protraction for illustration, as follows:
2nd. West, 122 perches,
3rd. South, 70 perches,
4th. Thence to the beginning. The first line of said Military Lot is shown upon the plats by a solid black line, and the remaining lines by broken black lines, said lines being numbered with black figures from 1 to 4, both inclusive, and said Military Lot is designated "Lot 317," within said lines. The beginning of said Lot is shown at black I on the plats.

Military Lot No. 318.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the beginning and 1st. line of Military Lot. No. 318, according to its original courses, distances, and calls, as contained in the Certificate of Award therefor, as follows:

1599 I began the location of said Military Lot at a stake, standing at the end of 42 perches on the 3rd. line of "The Royal Charlotte," it being also the end of the 1st. line of Military Lot No. 317, said point or beginning being shown upon the plats at black J, and ran thence,

1st. With the 3rd. line of "The Royal Charlotte," reversed, North 26° East, 42 perches, to the end of the 2nd. line of said tract, then,
2nd. With the 2nd. line of "The Royal Charlotte," reversed, South 64° East, 20 perches, to the end of the 4th. line of "Small Meadows," and with it reversed,
3rd. North 7° East, 27 perches,
4th. North 80° West, 65 perches,
5th. South 7° West, 13 perches,
6th. West, 96 perches,
7th. South, 50 perches,
8th. Then to the beginning.

The first line of said Military Lot is shown upon the plats by a solid black line, and the remaining lines are shown by broken black lines, said lines being numbered with black figures from 1 to 8, both inclusive, and the said Military Lot is designated "Lot 318" within said lines.

Military Lot No. 1237.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the beginning and 1st. line of Military Lot No. 1237, according to its original courses, distances and calls,
1600 as contained in the certificate of Award therefor, as follows:

I began the location of said Military Lot at a stake standing at the end of 327 perches on the 3rd. line of a tract of land called "Thomas and Ann," surveyed for Thomas Johnson, and hereinbefore referred to, said point, or beginning being shown upon the plats at black K, and run thence,

1st. With the 3rd. line of "Thomas and Ann," South 28° West, 204 perches, to the point marked black T on the plats, thence,
2nd. North, 82 perches, thence
3rd. By a straight line to the beginning.

The first line of said Military Lot is shown upon the plats by a solid black line, and the remaining lines by broken black lines, said lines being numbered with black figures from 1 to 3, both inclusive, and said lot is designated "Lot 1237" within said lines.

Said Military Lot is located upon the plats as called for on the 3rd. line of "Thomas and Ann." The end of its first line, as shown at black T, being by latitude, 83849 feet North, and by departure, 7137.7 feet East, of "Potomac Spring," the perpendicular distance East of the "Bauer-Michler Meridian" of the end of the 1st. line being 1176.1 feet.

Military Lots Nos. 1238 and 1239.

I then, by direction of Counsel for the State of Maryland, located upon the plats, by protraction for illustration, Military Lots, Nos. 1238 and 1239, according to their original courses, distances and calls, as contained in their respective Certificates of Award, as
1601 follows:

Lot No. 1238:

Beginning at the end of the 2nd. line of Lot No. 1237, and running North, 80 perches, East, 100 perches, South, 80 perches, then by a straight line to the beginning.

Lot No. 1239:

Beginning at the end of the first line of Lot No. 1238, and running North 80 perches, East, 100 perches, South, 80 perches, then by a straight line to the beginning.

Military Lot No. 1240.

I then, by direction of counsel for the State of Maryland, located by actual survey, the beginning and 1st line of Military Lot No. 1240, according to its original courses, distances and calls, as contained in the Certificate of Award therefor, as follows:

I began the location of said Military Lot at a stake standing at the

end of 120 perches on the 3rd. line of a tract of land called "Thomas and Ann," shown upon the plats at black L, and ran thence,

1st. South 28° West, 202 perches, to the end of the 3rd. line of Lot No. 1238,
2nd. North, 180 perches,
3rd. Then by a straight line to the beginning.

The first line of said Military Lot is shown upon the plats by a solid black line, and the remaining lines by broken black lines said lines being numbered with black figures from 1 to 3, both
1602 inclusive, and said Military Lot is designated "Lot 1240" on the plats, within said lines.

Military Lot No. 1447.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the beginning and the first four lines of Military Lot No. 1447, according to their original courses, distances and calls, as contained in the Certificate of Award therefor, as follows:

I began the location of said Military Lot at its original beginning, which point is shown upon the plats at black M, it being the end of the 2nd. line of "The Diadem," hereinbefore referred to, and established by actual survey, and ran thence,

1st. North 9° East, 30 perches,
2nd. South 69° East, 40 perches,
3rd. North, 110 perches,
4th. West, 100 perches, the remaining lines being laid down by protraction for illustration.

The first four lines of said Lot are shown upon the plats by solid black lines, and the remaining lines by broken black lines, numbered with black figures from 1 to 6, both inclusive, and said land is designated "Lot 1447" within said lines.

Military Lots Nos. 1448, 1449, 1450, 1451, and 1462.

1603 I further certify and return, that by direction of Counsel for the State of Maryland, I have laid down upon the plats, by protraction for illustration, Military Lots Nos. 1448, 1449, 1450, 1451 and 1462. The beginnings of Military Lots Nos. 1448 and 1449, having also been determined by actual survey, as standing at the end of the 4th. line of Military Lot No. 1447, and shown upon the plats at black N.

Lot No. 1448:

Beginning at a bounded chestnut marked 5118, standing at the end of the 4th. line of Military Lot No. 1447, and running North, 80 perches, East, 100 perches, South, 80 perches, then by a straight line to the beginning.

Lot No. 1449:

Beginning at the beginning tree of Lot No. 1448, and running North, 80 perches, West, 100 perches, South, 80 perches, then by a straight line to the beginning.

Lot No. 1450:

Beginning at the end of the 1st. line of Lot No. 1449, and running North, 80 perches, East, 100 perches, South, 80 perches, then by a straight line to the beginning.

Lot No. 1451:

Beginning at the beginning of Lot No. 1450, and running North, 80 perches, West, 100 perches, South, 80 perches, then by a straight line to the beginning.

Lot No. 1462:

Beginning at the end of the 1st. line of Lot 1461, and running South, 174 perches, West, 46 perches, North 174 perches, then by a straight line to the beginning.

1604 These several Lots are shown upon the plats by broken black lines, and designated within said lines, Lot 1448, Lot 1449, Lot 1450, Lot 1451, and Lot 1462, respectively.

Military Lot No. 1463.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the first line, as well as the beginning, of Military Lot No. 1463, according to the Certificate of Award therefor, as follows:

I began said location at the beginning of Military Lot No. 1448, it being also at the end of the 4th. line of Military Lot No. 1447, designated upon the plats at black N, and ran thence,

1st. West, 146 perches, to the end of said 1st. line, and the remaining lines are laid down by protraction for illustration, numbered with black figures from 1 to 5, both inclusive, and within said lines said lot is designated, Lot 1463.

The end of the 1st line of Military Lot No. 1463 is shown upon the plats at black U, and the latitude of the stake standing at said point is 129436.2 feet North, and the departure, 8672.3 feet East of "Potomac Spring," the perpendicular distance, East of the "Bauer-Michler Meridian," being 2721.2 feet.

Military Lot No. 2952.

I then, by direction of Counsel for the State of Maryland, located by actual survey the beginning and all the lines of Military
1605 Lot No. 2952, according to the courses, distances and calls contained in the Certificate of Award therefor, as follows:

I began the location of said Lot at the end of 34 perches on the first line of the tract of land called "Cherry Hill," granted to Wil-

liam Deakins, Jr., said point being designated upon the plats at black O, and ran thence,

1st. South, 117 perches,
2nd. East, 80 perches,
3rd. North 78 perches, to the 2nd. line of "Cherry Hill,"
4th. North 30° West, 34 perches,
5th. Then by a straight line to the beginning.

The lines of said Lot are shown upon the plats by solid black lines, numbered with black figures, from 1 to 5, both inclusive, and within said lines, said Lot is designated "Lot 2952."

The stake standing at black O, on the plats, is by latitude, 159908.3 feet North, and by departure, 9567.2 feet, East of "Potomac Spring," and the perpendicular distance from the "Bauer-Michler Meridian" to the point black O, the beginning of said Lot, is 3623.3 feet.

In locating the lines of this and all preceding Military Lots, an allowance of 3° 47′ to the right was made for magnetic variation.

Ashby's Cove.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully resurveyed and laid down by actual survey, the lines of a tract of land called "Ashby's
1606 Cove," originally, on the 13th. day of April, A. D. 1774, surveyed for Samuel Chase, then lying in Frederick County in the State of Maryland, by virtue of part of a Special Warrant for 2000 acres granted him out of the Proprietary's Land Office, according to the Conditions of Plantation then in force, on the 25th. day of March, A. D. 1774, and patented by the State of Maryland to Thomas Hall of Harford County on the 14th. day of May, A. D. 1787, containing 250 acres.

I began said survey at two very old wild cherry trees, standing about 3 perches from the North side of Snowy Glade Creek, one of which trees I blocked and proved that it had been anciently bounded.

These trees stand near the end of 307 perches on the 3rd. line of a tract of land called "Kindness," hereinbefore referred to, and I then located the said tract of land called "Ashby's Cove," according to its original courses, distances and calls, as follows:—

1st. North, 286 perches,
2nd. North 76° West, 120 perches, and set a stake marked, "Nov. 16, No. 6,"
3rd. South 10° 30′ West, 272 perches. At the end of 201 perches on this line, Snowy Glade Creek is crossed.
4th. Thence by a straight line to the beginning.

In locating this tract of land, an allowance of 4° 08′ to the right was made for magnetic variation.

This tract is shown upon the plats by solid black lines numbered with black figures from 1 to 4, both inclusive, and within said lines, by the words, "Ashby's Cove," and the beginning of said tract is shown at the black letter, W.

1607 Nonpariel.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully resurveyed and laid down by actual survey, the first 10 lines of a tract of land called "Nonpariel," originally surveyed for Jonathan Boucher on the 5th. day of September, A. D. 1774, by virtue of 1862 acres, part of a Common Warrant for 2000 acres, dated the 26th. day of March, A. D. 1774, and 50 acres, part of a Special Warrant for 4000 acres, dated the 25th. day of March, A. D. 1774, both of said Warrants being granted to the said Jonathan Boucher out of the Proprietary's Land Office for the Colony of Maryland, according to the Conditions of Plantation then in force, and patented by the State of Maryland to James Wignell of Baltimore Town, on the 29th. day of September, A. D. 1786, containing 2482 acres.

I began said survey near some hickory trees, standing on the West side of a hill, near an old road leading from the "Dunkard Glades," to the "Dunkard Bottom," about 40 perches from a glade, and at a stake, standing at the end of the 46th. line of a tract of land, patented by the State of Virginia to Francis and William Deakins on the 22nd. day of September, 1789, for 6000 acres, which said point is called for in said last mentioned Patent, as the beginning of said tract called "Nonpariel," and ran thence,

1st. North, 114 perches,
2nd. North 60° East, 120 perches,
3rd. North 45° East, 24 perches,
4th. North 12° East, 110 perches,
5th. North, 148 perches,

1608

6th. North 60° East, 114 perches. At the end of 8 perches and 1 link on this line is the center of the "Old Burchinal Road," and the intersection of the "Brown-Bauer Meridian," at the end of 11315 feet North of "Potomac Spring."
7th. North, 61 perches,
8th. North 30° West, 50 perches,
9th. North 30° East, 65 perches,
10th. North 20° West, 241 perches. The remaining lines of said tract are laid down upon the plats by protraction for illustration.

This tract is designated "Nonpariel," upon the plats, and its lines are shown from the beginning at Np, to the end of the 10th. line by solid black lines, and the remaining lines are broken black lines, numbered with black figures from 1 to 36, both inclusive.

Tracts Granted by the State of Virginia, Wholly or in Part Within Territory Claimed by the State of Maryland.

I further certify and return, that by direction of counsel for the State of Maryland, I located by actual survey, the beginning and the first four lines of a tract of land known as "The William Ashby 300

acre Tract," granted by the Commonwealth of Virginia "to William Ashby, in conformity with a survey made on the 21st. day of
1609 March, A. D. 1785, by virtue of Preemption Treasury Warrant, No. 1843, issued the 16th. day of November, A. D. 1781, to John Simpson, assignor of William Ashby, lying and being in Monongalia County, on the main branch of the Youghiogheny river, adjoining the Maryland Line."

(Within "——" quoted from Patent.)

I began said survey at a rock standing in the waters of the Youghiogheny river, on the East side thereof, pointed out to me by Parker Ashby, a witness produced upon the ground on behalf of the State of Maryland, as the place where a cherry tree formerly stood, the original beginning of "The William Ashby 300 acre Tract," and ran thence, according to the original courses, distances and calls of said tract, as follows:

1st. North 61° West, 109 perches,
2nd. South 51° West, 112 perches; at the end of 50 perches on said 2nd. line, we set a stake, at the intersection of the "Bauer-Michler Meridian,"
3rd. South 84° West, 54 perches,
4th. South 37° West, 160 perches, and set a stake.

The beginning of said tract is shown upon the plats at black P, and the first four lines thereof are shown by solid black lines, and the remaining lines are shown by broken black lines, and the lines are numbered with black figures, from 1 to 9, both inclusive, and within said lines, said tract is designated "Ashby 300 A."

In locating this tract upon the ground, an allowance of 3° 50′ to the right was made for magnetic variation.

This tract is located upon the plats from a stake at the end of 50 perches on the 2nd. line thereof, where it intersects the
1610 "Bauer-Michler Meridian." The latitude of said stake is 51024.6 feet, North, and the departure, 5969.2 feet East of "Potomac Spring."

William Deakins' 138 Acre Tract.

I further certify and return, that by direction of Counsel for the State of Maryland, I then located by actual survey, the beginning and the first four lines of a tract of land known as "The William Deakins 138 Acre Tract on Nettle Ridge," according to the original courses, distances and calls contained in the Patent therefor, "granted to William Deakins by the Commonwealth of Virginia, on the 21st. day of August, 1787, by virtue and in consideration of part of an Office Treasury Warrant No. 20989, paid the 1st. day of December, 1783, a tract or parcel of land containing 138 acres, by survey bearing date the 5th. day of December, 1785, lying in and being in the County of Monongalia."

(Within "——" quoted from patent.)

I began said survey at an anciently bounded poplar tree, standing on the Northwest side of a branch of Buffalo Run, and on the North side of Nettle Ridge, said tree being pointed out to me by

Mr. Thomas Savage, a witness produced upon the ground on behalf of the State of Maryland, as the original beginning of "The William Deakins 138 acre Tract," and ran thence,

1st. South 45° West, 80 perches, thence,
2nd. South 30° East, 120 perches, to an anciently bounded red oak and near a poplar stump, (the original call being for a red oak, white oak and poplar), thence,

1611

3rd. South 60° East, 100 perches, thence,
4th. North 62° East, 80 perches.

The remaining line is laid down upon the plats by protraction for illustration.

In locating this tract upon the ground, and allowance of 4° to the right or East, was made for magnetic variation.

The beginning of said tract is shown upon the plats at black R, and the first four lines are shown by solid black lines and the given line by a broken black line, and the lines are numbered with black figures from 1 to 5, both inclusive, and within said lines, said tract is designated "Deakins 138 A."

This tract is located upon the plats from the point, Hub A, in the "Bauer-Michler Meridian" hereinbefore referred to.

From Hub A, I ran a traverse line as follows:

1st. East, 1436 feet,
2nd. South 71° 56′ East, 1516 feet,
3rd. North 87° 42′ East, 1069.5 feet,
4th. North 61° 24′ East, 1255 feet,
5th. South 80° 39′ East, 1133.5 feet,
6th. South 54° 24′ East, 405 feet, to the poplar tree, the beginning of "The William Deakins 138 acre Tract," shown at black R.

The perpendicular distance East of the "Bauer-Michler Meridian" to the beginning of said tract is 6495.8 feet.

The beginning of said tract is by latitude, 165028.2 feet North, and by departure, 12438.5 feet East of "Potomac Spring."

1612 Hooker Tract.

I then, by direction of Counsel for the State of Maryland, located by actual survey, the 26th. and last line of a tract of land called the "Hooker Tract," granted by the Commonwealth of Virginia to John Hooker, assignee of Robert Hooker, by Patent bearing date the 17th. day of April, 1788, in pursuance of a survey made by virtue and in consideration of part of a Land Office Treasury Warrant No. 21443 paid the 23rd. day of December, 1783; said survey bearing date, the 20th. day of November, 1786, containing 2251 acres.

I began said survey at the beginning of said 26th. line, at a bounded chestnut tree, near a fallen red oak, pointed out to me by Dorsey L. Ashby and Jesse J. Ashby, Jr., witnesses produced upon the ground on behalf of the State of Maryland, as the Southeast corner of the "Hooker Tract," and ran thence,

26th. South 67° 15′ West, 230 perches, along a marked line, and then prolonged said line to the end of 270 perches, to an anciently bounded white oak, red oak and chestnut stump, pointed out to me by Dorsey L. Ashby, as the beginning of the "Brannan Land," which is a part of the said "Hooker Tract," and believed to be the original beginning of said "Hooker Tract."

The remaining lines of said tract are shown upon the plats by broken black lines, the said 26th. line being in solid black, and said lines are numbered with black figures, numbered from 1 to
1613 26, both inclusive, and within said lines, said tract is designated "Hooker."

The beginning of said tract is shown upon the plats at black Q. and the beginning of the said 26th. line thereof, is shown at black V.

Francis and William Deakins' 6000 Acre Tract.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully resurveyed and laid down by actual survey, the lines of the "Francis and William Deakins 6000 Tract," granted to them by the State of Virginia, on the 22nd. day of September, 1789, from the 35th. to the 46th. lines, both inclusive.

I began said survey at a fallen bounded white oak, at the 3rd. corner of the Deakins 222 Acre Survey, granted by the State of Virginia, which said tree was pointed out to me by Henry Sisler and John Kenney, witnesses produced upon the ground on behalf of the State of Maryland, as the original white oak called for at the end of the course, South 20° West, 106 perches, of said Deakins 222 Acre Survey, and also a corner of the Deakins 6000 Acre Survey, it being the beginning of the 35th. line of said tract, and ran thence,

35th. South 5° West, 138 perches, corrected to South 4° West, 138 perches, to a fallen and decayed white oak,

36th. South 81° East, 122 perches, to a sarvice and maple (not found),

1614

37th. North 9° East, 200 perches, to a sarvice, chestnut and sassafras, (not found), corrected to North 11° East, 191 perches, to a stone pile, pointed out to me by Henry Sisler and Parley De Berry, witnesses produced upon the ground on behalf of the State of Maryland, as the corner at the end of the 37th. line of the Deakins 6000 Acre Survey,

38th. North 89° 30′ East, 196 perches, to a tract of land called "Ashby's Cove," corrected to North 89° 30′ East, 197 perches, to the 3rd. line of said tract called "Ashby's Cove," patented by the State of Maryland, as hereinbefore referred to,

39th. North 10° 30′ East, 41 perches, to the 6th. line of a tract of land called "Thomas and Ann," and with it reversed, the four folowing courses, corrected to North 10° 30′ East, 85½

perches, to the 6th. line of "Thomas and Ann," patented by the State of Maryland, as hereinbefore referred to,

40th. North 76° West, 40 perches, corrected to North 67° West, 58 perches, and 7 links to the end of the 5th. line of "Thomas and Ann,"

1615

41st. North 12° 30′ East, 217 perches,
42nd. North 82° East, 169, perches,
43rd. North 28° East, 70 perches,
44th. North, 675 perches, to Albert Gallatin's Survey, and with it,
45th. West, 590 perches, to a tract of land patented in Maryland, called "Nonpariel," thence,
46th. South, 114 perches, to the beginning tree of said land called "Nonpariel," and with the following lines of it reversed, (which lines I have laid down by protraction for illustration,)
47th. South 24° East, 371 perches,
48th. South 80° West, 90 perches,
49th. South 30° West, 36 perches,
50th. South, 40 perches,
51st. South 85° West, 91 perches.

This tract is shown upon the plats by solid black lines, numbered with black figures from 35 to 51, both inclusive, and within said lines, by the words, "Deakins' 6000 Acres." The beginning is shown by the black figures, 222. A magnetic variation allowance of 3° 50′ to the right was made on lines 35 to 38, both inclusive, and from 44 to 46, both inclusive, and an allowance of 4° 08′ on lines 39 to 43 and 47 to 51 in order to make this location correspond with the lines of the older surveys of Maryland, called for by this tract and made in this cause.

1616 *Additional Locations of Land Tracts by the State of Maryland.*

West Point.

I further certify and return, that by direction of Counsel for the State of Maryland, I have located by actual survey upon the ground, the end of the 13th and the 14th and 15th lines of a tract of land called "West Point," according to the courses, distances and calls contained in the original certificate and patent therefor, granted by the State of Maryland to General John Swan on the — day of ——, 1793, containing 461 acres.

I began said survey at the end of the 13th line of said tract, at a chestnut stump, pointed out to me by D. Webster Wilson, a witness produced upon the ground on behalf of the State of Maryland as the stump of the original chestnut tree called for at said point, the same having been shown to him by George L. Mosser, now deceased, as the stump of said original chestnut tree at the end of the 13th line

of "West Point," which is shown at black W B on the plats, and ran thence the 14th and 15th lines of said tract as follows:

1. North 80° West, 28 perches, to the end of said 14th line,
2. North 15° East, 36 perches, to the end of the 15th line of "West Point," shown at black Z on the plats, which point is also the end of the 2nd line of each of the tracts "Siege of Acre Resurveyed," and "Troas Resurveyed," hereinafter mentioned in these returns.

1617 The beginning of said tract called "West Point" is shown at black T on the plats, and the tract is designated West Point, upon the plats, with solid black lines numbered with black figures from 1 to 17, both inclusive.

The remaining lines of said tract are laid down upon the plats by protraction for illustration.

Siege of Acre Resurveyed.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully located and laid down by actual survey upon the ground, part of the lines of a tract of land called "Siege of Acre Resurveyed," granted by the State of Maryland to Richard M. McCulloh and William C. Pennington, as tenants in common, on the 22nd day of April, 1887, as follows:

I began said survey at a chestnut stump, standing on the East side of the old Mountain Road, on Backbone Mountain, pointed out to me by Daniel W. Wilson, a witness produced upon the ground, on behalf of the State of Maryland, as standing at the end of the 13th line of a tract of land called "West Point," said point being shown to him by George L. Mosser, now deceased, as one of the original corners of said tract of land called "West Point," said point being shown at black WB, on the plats, and ran thence, reversing the 4th and 3rd lines of said tract called "Siege of Acre Resurveyed," and running with the 14th and 15th lines of said tract called "West Point,"

1. North 80° West, 28 perches,
2. North 15° East, 36 perches, and end of the 15th line of "West Point," as called for in the Patent for said tract of land called
1618 "Siege of Acre Resurveyed," which point is shown at black Z on the plats, it being also the end of the 2nd line of each of the tracts called "Siege of Acre Resurveyed," and "Troas Resurveyed," thence leaving the said tract called "West Point," and reversing the 2nd line of said tract called "Siege of Acre Resurveyed,"
3. North 52° West, 126 perches, corrected to 132 perches, to the Bauer-Michler Meridian, shown at black WT, on the plats, which point is also the end of the 1st line of said tract called "Siege of Acre Resurveyed," thence reversing the 1st line of said tract,
4. South, 500 perches, to the beginning of said tract called "Siege of Acre Resurveyed," shown at black S, on the plats.

The remaining lines of said tract are laid down upon the plats by protraction for illustration, and the beginning thereof is shown at black S, on the plats, and the lines thereof are numbered with black figures from 1 to 17, both inclusive, and within said lines, said tract is designated Siege of Acre Resurveyed, upon the plats.

1619 Troas Resurveyed.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully located and laid down by actual survey upon the ground, the 3rd and part of the 4th lines of a tract of land called "Troas Resurveyed," granted by the State of Maryland to Richard S. McCulloh and Daniel E. Offut, as tenants in common, on the 22nd day of January, 1896, as follows:

I began said survey at the end of the 2nd line of said tract, which point is shown at black Z, on the plats, and reversing the 3rd line of a tract of land called "Siege of Acre Resurveyed"

1. North 47° West, 145 perches, *corrected to* North 52° West, 132 perches, to the Bauer-Michler Meridian, said point being shown at black WT, on the plats, and ran thence with said Meridian, and with the 4th line of said tract called "Troas Resurveyed,"
2. North, 20 perches. The remainder of this line of said tract, as well as its following lines were laid down upon the plats by protraction for illustration.

The beginning of said tract called "Troas Resurveyed" is shown at black T on the plats, and the lines thereof are numbered with black figures from 1 to 41, both inclusive, and within said lines, said tract is designated, Troas Resurveyed, upon the plats.

1620 White Rock.

I further certify and return, that by direction of Counsel for the State of Maryland, I have carefully located and laid down, by actual survey upon the ground, the Beginning, and the 5th and 6th lines of a tract of land called "White Rock," granted by the State of Maryland to Notley B. Browning on the 23rd day of December, 1881.

I began the location of the Beginning of said tract from the point shown upon the plats at the black circle and the words "Fikes Hill," and ran thence, West, 8.93 feet, South 4° 42′ East, 195.4 feet, South 17° 30′ East, 284.5 feet, South 16° 15′ West, 335.3 feet, South 32° 33′ West, 104.3 feet, South 7° 12′ East, 167 feet, South 40° 02′ East, 397.3 feet, South 28° 40′ East, 66 feet, South 41° East, 127 feet, South 25° 55′ East, 84.5 feet, South 33° 30′ East, 101 feet, South 32° 35′ East, 118.5 feet, South 55° 20′ East, 242.6 feet, South 48° 12′ East, 66 feet, South 57° 40′ East, 284.5 feet, South 46° 50′ East, 276.6 feet, South 64° 40′ East, 289.7 feet, South 49° 10′ East, 134 feet, South 40° 32′ West, 1011.1 feet, South 88° 12′ West, 1107 feet, North 4° East, 13.2 feet, to the Beginning, it being a small planted stone, pointed out to me by J. D. Browning, a witness produced upon the ground, on behalf of the State of Maryland.

This point is shown upon the plats at the black letter Y, and said tract is located within the black lines, numbered with black figures from 1 to 7, both inclusive, and indicated by the words "White Rock" within said lines.

I began the location of the lines surveyed at a bounded Gum tree, shown upon the plats at black F, which tree was pointed out to me by Samuel Falkner, a witness produced upon the ground on behalf of the State of Maryland, as the original Gum tree called for
1621 at the end of the 4th line of said tract called "White Rock," and one of the beginning trees of the tract of land called "Elder Spring," and ran thence,

1. South 7° East, 90 perches,
2. South 41° West, 40¼ perches,
3. South 77° West, 53 perches, corrected to 39.5 perches, to the Bauer-Michler Meridian, shown upon the plats at black XM.

The remaining lines of said tract called "White Rock," were laid down upon the plats by protraction for illustration.

Location of House Where Austin Brown was Assaulted by Marshall Reckard, in the Year 1886.

I further certify and return, that by direction of Counsel for the State of Maryland, I then went to the ruins of an old house, at which point Austin Brown was assaulted by Marshall Reckard, on the 2nd day of September, 1886, which point is shown upon — by a black circle and black letters, WR, within the lines of the tract of land called "White Rock," located upon the plats in this cause.

The point at which the assault occurred was shown to me by Austin Brown and John A. Reckard, witnesses produced upon the ground on behalf of the State of Maryland.

From the ruins of the house, in order to locate the point (WR) upon the plats, and connect it with the other locations made in this cause on behalf of the State of Maryland, I used the method
1622 of triangulation, and found the ruined house stood South 15° 12′ East, 6015.25 feet from a Hub and Station upon the tract of land called "Elder Spring," located upon the plats in this cause, on the land of Martha J. Falkner.

Going to the above station, I then ran,

1. North 51° 17′ East, 392 feet,
2. North 32° 30′ East, 1075.1 feet, to the Gum tree, the beginning of the tract of land called "Elder Spring," and shown upon the plats at Black F.

Subdivisions of "Elder Spring," as Now Held and in Possession, under Title Derived from the State of Maryland.

Part of said Tract Designated "EA" on the Plats, and Now in Possession of Martha J. Falkner.

Beginning for the same at the original beginning of said whole tract, being a bounded white oak and gum, and running thence with the 1st line of said whole tract,

1. North 6° East, 98 perches,
2. North 88° West, 69 perches,
3. South 6° West, 223 perches, to the end of 44 perches on the 14th line of said whole tract, and with the lines thereof,
4. South 51° East, 12 perches,
5. North 77° East, 80 perches,

1623

6. North 41° East, 40 perches,
7. Then by a straight line to the Beginning, containing 111 acres.

Part of said Tract Designated "EB" on the Plats, and now in Possession of Jeremiah Bitner.

Beginning for the same at the end of the second line of the original tract, and running thence,

1. North 79° West, 39 perches,
2. South 60° West, 128 perches,
3. South 88° East, 69 perches, to the end of 98 perches on the 1st line of the original tract, and with it,
4. North 6° East, 48 perches,
5. North 20° West, 80 perches, to the Beginning, containing 50 acres.

Part of said Tract Designated "EC" on the Plates, and now in Possion of Marshall Friend.

Beginning for the same at the end of the second line of the original tract, and running thence with it,

1. North 7° East, 173 perches,
2. West, 57 perches, then,
3. South 6° West, 162 perches,
4. Then by a straight line to the Beginning, containing 50 acres.

Parts of said Tract Designated "ED" and "EE" on the Plats, and now in Possession of Thomas Lewis and William Phillips and Others Respectively.

Beginning for the same at the end of 57 perches on the fourth line of the original tract, and running thence,

1624

1. South 6° West, 514 perches, to the end of 44 perches on the 14th line of said tract, and with the line of said tract reversed,
2. North 51° West, 44 perches,
3. North 10° East, 147 perches,
4. North 42° West, 40 perches,
5. North 8° East, 30 perches,
6. North 38° East, 82 perches,
7. North, 20 perches,
8. North 48° West, 98 perches,
9. North 32° West, 40 perches,
10. North 73° East, 80 perches,
11. North 67° East, 60 perches,
12. East, 43 perches, to the Beginning, containing 200 acres.

Summary.

The following summary of the results of the surveys made in this case on behalf of the State of Maryland, as given in detail, in the preceding pages of this report, is made for the purpose of elucidating and simplifying an examination thereof.

Before beginning the actual field work upon the 2nd day of August, 1897, I had every reason to believe, that the so-called "Fairfax Stone" was not at the true "First Fountain of the River
1625 Potomac." The first thing to be done therefore, was to obtain proof by actual survey, as to whether said stone did stand at the first source of the River.

Witnesses produced upon the ground pointed out the position of the "Fairfax Stone." The original stone was an ordinary rock, about 4 inches thick by 12 inches broad, projecting not over 18 inches above the ground, and marked with the letters, "Ffx." This stone has been destroyed, but directly south of where it stood, a monument of loose cut stones was set up by Lieut. N. Michler in 1859.

The call of the Western Boundary, in the Charter granted to Lord Baltimore is for the "meridian" or true North line drawn to the "first fountain of the river Potomac."

Dr. L. A. Bauer at once made a preliminary determination of the direction of the "Meridian" from "Fairfax Stone."

This line, I prolonged to the North for 2 9/10 miles, and when the final position was obtained, marked it, by planting stones and taking other references.

Upon running north from the "Fairfax Stone," the Meridian strikes the Southern or right hand bank of the river, at the end of 4020 feet, where the stream is 30 feet wide between banks.

Planting a stone at this point, "Station 0°" on the plats, I ran from it up the right or southern bank of the river, calculating the courses from the angles laid off by the transit.

At the end of the aggregate distance of 3842.4 feet or 73/100 miles, the stream forks. This point is designated upon the ground and upon the plats as "Station 31."

From "Station 31" I continued up the southern branch, designated upon the plats "Fairfax Run," and at the end of 5975.7
1626 feet, or 1.13 miles from said Station, I set a stake, 16 feet to the right of a strong flowing spring, called "Michler's Spring," designated upon the plats by the black letters, "M. S."

At the end of 6418.8 feet, or 1.21 miles, is "Fairfax Stone," on Fairfax hill, our point of beginning, a total distance by the stream from "Station 0°," of 10261 feet, or 1.9 miles.

I then returned to "Station 31," and ran up the northwestern branch of the River, designated "Potomac River," upon the plats, to the "Potomac Spring," upon the Backbone Mountain, the aggregate distance from "Station 31," being 6477.7 feet, or 1.23 miles, and from "Station 0°," 10,321.1 feet, or 1.9 miles.

To further illustrate the pretentions of the State of Maryland, I located the Potomac river down to the mouth of Laurel Run, its principal tributary, and also located Laurel run from its mouth to its source upon the Backbone Mountain.

For illustration I have also located upon the plats, the South prong of the Potomac River, according to the courses run in the survey thereof by the State of West Virginia. The head spring is designated upon the plats by the letters and figures, "Oct. 24."

The heads of Lead Mine and Glade Runs, both rising upon the Backbone Mountain, and tributaries of the Cheat River, were also located. These two streams both rise near the "Potomac Spring."

I prolonged the "Fairfax Meridian" from the crossing of the River to the summit of the Backbone Mountain, taking actual measurements upon the ground and marking the line as follows:

At the end of 5213 feet.

At the end of 6000 feet (Arnold's Ridge).

At the end of 9047 feet (Laurel Run).

1627 At the end of 15092.6 feet, or 2.9 miles (Summit of Backbone Mountain).

I then determined by actual measurement, from a point upon the West Virginia Central and Pittsburgh Railway, of known elevation above the Sea, the actual elevation of the following points, viz:

Station 0° Potomac River	2709.0 feet.
Michler Spring	3134.0 "
Head of South Prong of River	3144.8 "
Fairfax Stone and Spring	3162.4 "
Head Spring of Laurel Run	3228.7 "
Head of Glade Run	3261.3 "
Potomac Spring	3287.1 "
Summit of Backbone Mountain (Potomac Meridian)	3356.3 "

At the forks of the Potomac, Station 31, I found by actual measurement, that the beds of the streams covered by running water, was, for the Potomac Branch, an average of 9.1 feet in width, as against 8.2 feet for Fairfax run.

The southwestern corner of the State of Maryland, according to the pretensions of the State of West Virginia in this case, does not

stand at any spring, nor at the "Fairfax Stone," but at a point, 1.9 miles from its source, where the banks of the Potomac river are 30 feet apart, and in a direct line, 4020 feet north of Fairfax Stone; in other words, the line running north from the "Fairfax Stone" is not a dividing line at all, but wholly within the territory of West Virginia.

This arises from the fact, that the river, the general course
1628 of which is northeasterly, divides into two branches, at Station 31, above noted. In following up the southern branch, it is found to curve gradually in a semi-circle to the "Fairfax Stone," the last course being in a direction exactly opposite to that of the river at the crossing of the Fairfax Meridian, 4020 feet to the north.

The northern branch retains for some distance the general course of the river, changing gradually to the northwest, and heads at a strong spring within 277.3 feet of the summit of the Great Savage or Backbone Mountain. Having located these two streams, taken their elevations, determined their positions &c., it was found that the Potomac branch best fulfilled the call in the Charter to Lord Baltimore. The facts in evidence were that the two streams were practically the same in length and carried, approximately the same volume of water, there being a slight advantage in each case in favor of the Potomac branch.

The spring at "Fairfax Stone frequently goes dry, and I have seen it in this condition in the fall of 1897, and again in 1899, the true source of said branch being at the Michler Spring, which is 443 feet below the "Fairfax Stone," in distance, and 28.4 feet lower, in elevation. The Potomac Spring is a lasting one, and has never been known to go dry. It is 5981 feet or 1⅛ miles west of the "Fairfax Stone," and 124.7 feet higher in elevation, taking its rise so near to the summit of the Backbone Mountain, which divides the waters flowing east to the Potomac from those flowing west to the Ohio.

Only a short distance from the top of this "Divide" we located the head of Lead Mine Run, on the west, within 600 feet of Potomac Spring.

1629 The Charter to Lord Baltimore calls to run "unto that part of Delaware Bay, on the North which lieth under the fortieth degree of North latitude, then passing from the said bay called Delaware Bay in a right line by the degree aforesaid unto the true Meridian of the first fountain of the river Pattowmack, thence verging toward the south unto the further bank of the said river, and following the same on the West and South to a certain place called Cinquak, situate near the mouth of said river."

These calls of the Charter are precisely and entirely complied with by the Potomac Spring and stream. The meridian line from the 40th parallel of latitude, verging toward the South to this fountain, leaves to the East, all other waters of the Potomac river.

From this point, running with the stream which flows from this spring toward the southeast, the state line of Maryland follows the same on the West and South bank, and thence on to the mouth of the river.

The Fairfax spring and run do not, in any way, comply with the Calls contained in the Charter. This spring is not perrennial; it is wholly outside of territory claimed and conceded to Maryland, so that, it is impossible for the Maryland State Line to run from this point; furthermore, owing to the circular curve of the stream, the South bank soon becomes the North bank, making it impossible to follow the South bank continuously from the source of the river to its mouth; again, the Fairfax Meridian runs North for three-fourths of a mile through the territory of West Virginia, cutting across the river and several of its tributaries, leaving many of the waters and springs to the west, the main stream or river running 1.9
1630 miles further to the west, so that in no sense can the "Fairfax Stone" said to be at the "first fountain of the Potomac."

The Fairfax Meridian was run, in order to locate that line, and for reference to other points in the survey, for the purpose of using it as a base from which to run check, or off-set lines to points on the line located by the State of West Virginia, in 1894, to show that said line is not a true Meridian line, and that it is not a straight line between the "Fairfax Stone" and the "Mason and Dixon line," and does not, in anywise, gratify the call in the Charter to Lord Baltimore.

It was decided to rest the claims of the State of Maryland on the Meridian running from the Potomac Spring, and Dr. L. A. Bauer, the Astronomer of the party was therefore instructed by Counsel for the State of Maryland to carefully determine the true Meridian and prolong the same North to the "Mason and Dixon Line, by using the summits of the several intervening ridges as his principal observation Stations, while I ran the line between his stations, and took measurements of all intermediate points to be made use of in the surveys to follow.

At all the principal stations on the Fairfax Meridian, the Magnetic Declination was carefully determined by Dr. Bauer, (the declination at any given point being the angle which the magnetic needle makes with the true meridian at that point), in order that the results obtained could be used in the counterlocation of the survey made by the State of West Virginia, in 1894, in this case.

In her survey, an ordinary compass only, was used, and the line was run with a constant allowance of 3° 40′ to the right for variation, (which term indicates the change in direction of the
1631 magnetic needle from one year to another).

We found that at the end of 6000 feet on the Fairfax Meridian, the Monroe line, run for the State of West Virginia, was 83.1 feet to the east.

At the Backbone Mountain, 15,092.6 feet on said Meridian the Monroe Line was 207.8 feet to the east.

At Snaggy Mountain, 105,600 feet on said Meridian, the Monroe Line was 1204.7 feet to the east.

At the "Mason and Dixon Line, 190,438 feet on said Meridian, the Monroe Line was 1461.1 feet to the east.

The Magnetic Declination, as we find from our work, is not constant, as we proceed North.

At the "Fairfax Stone" it was, in the fall of 1897, 3° 05′ 12″ West, while at "Mason and Dixon's Line" it was 3° 47′ 30″ West, or a difference of 0° 42′ 18″.

The Magnetic Declination is increasing at the rate of 3′ each year, therefore, the declination at "Fairfax Stone" in 1894, the date of the West Virginia survey, would have been 2° 56′ 12″ and therefore, by running with an allowance of 3° 40′ at the "Fairfax Stone" the State of West Virginia, in her line, at once diverged from the true North at an angle of 43′ 48″ and the distance from the true North at any given point on her line would be found by multiplying the distance by the tangent of the angle.

At Snaggy Mountain, West Virginia was still running with an allowance of 3° 40′ while the true declination of that point, in 1894, was 3° 28′ 12″ or a difference of 11′ 48″ and up to this point said line had diverged 1204.7 feet.

At the "Mason and Dixon Line," still running with an
1632 allowance of 3° 40′ the divergence from the true North was 1462.1 feet. In 1894, the declination of the Fairfax Meridian at said point was 3° 38′ 30″ or 1′ 30″ from the true North.

It will therefore be seen that the divergence at "Fairfax Stone" was 43′ 48″; at Snaggy Mountain, 20 miles further North, 0° 11′ 48″ and at "Mason & Dixon Line 48″ and at Mason and Dixon Line, 36.6 miles from the beginning, 0° 1′ 30″ or nearly parallel with the Meridian, thus proving, that the angle of divergence was constantly changing as they proceeded North, and that the line is not a straight line, and describes a curve upon the ground.

It is apparent that no straight line can be run upon the ground with the magnetic needle.

As additional evidence of the claim on the part of the State of Maryland, numerous old land grants were surveyed, given under the Colonial Government and subsequently confirmed by the State, which show, that in 1774, this Government was the first to claim territory and jurisdiction over land lying between the lines now in controversy.

The fact of these grants having been made, and so generally extending to the west of the Fairfax Meridian would tend to show, that the western fountain of the river was known to the settlers of that early day. It is worthy of note, that up to the time of the institution of the present suit, the whole region for miles around all the headwaters of the Potomac was a wilderness, covered by virgin forest, and even to-day, there are deer and bear in the woods and laurel thickets.

The interlocking of the grants by Maryland and Virginia, as
shown upon the plats, demonstrates that no definite line, has
1633 ever been recognized by either State, as delimiting its jurisdiction and marking the boundary of its territory, although it is further shown upon the plats and by the evidence in this cause, that since the running of the Michler Line in 1859, the State of Maryland has held and exercised jurisdiction to that line, by its grants of land and the judgments of its Courts.

The two tracts, which best illustrate the uncertainty of the two

States as to the boundary dividing them, is the tract called "Nonpariel," granted by Maryland, and the "Deakins 138 Acre Tract," granted by Virginia.

"Nonpariel," granted in 1774, has its beginning at a point, whose latitude North of Potomac Spring is 93,107.5 feet, and its departure West, of the Potomac Meridian is 2518 feet, or 47/100 miles. The westernmost part of this tract is 1.3 miles west, of the Potomac Meridian.

The "Deakins 138 Acre Tract," granted in 1787, has its beginning at a point whose latitude North of Potomac Spring is 165,028.2 feet, and the departure East from Potomac Meridian is 12,438.5 feet, or 2.35 miles, and the easternmost part of said tract is 2.93 miles East of the Potomac Meridian.

The location of the Military Lots, upon the ground, as shown upon the plats, proves conclusively that they were not laid off to any particular line, as contended for by West Virginia in this case.

For convenience in platting, and in order to have a quick and accurate method of locating the true position of any given point upon the ground or upon the plats, I have adopted the Potomac Spring as the base to which all points are referred, and the position of any point upon the plats can be found by its latitude in feet North
1634 or South, and its departure in feet, East or West from Potomac Spring.

The scale of the Plat is 1,000 feet to one inch.

All of which is respectfully returned and submitted.

(Signed) W. McCULLOH BROWN,
Surveyor on the part of the State of Maryland.

(Endorsed on cover:) Report of W. McCulloh Brown, Surveyor for the State of Maryland. The State of Maryland *v.* The State of West Virginia. In the Supreme Court of the United States. Exhibit Brown No. 93. Supreme Court U. S. No. 1 Original, Oct. Term 1907, Maryland *v.* West Virginia, Filed Oct. 15, 1907.

1635 EXHIBIT AUSTIN BROWN.

STATE OF MARYLAND,
Garrett County, Towit:

At a Circuit Court of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington, Allegany and Garrett, begun and held for said Garrett County, at the Courthouse, in the Town of Oakland, on the First Monday of May and the second day of the same month, in the year of our Lord one thousand eight hundred and eighty seven, were present Honorable Henry W. Hoffman, Associate Judge; John W. Veitch, Esquire, State's Attorney; John H. Riley, Esquire, Sheriff, and W. H. Tower, Clerk, by his deputy, E. Z. Tower.

In the Record of Proceedings of said Court, among others, were the following, towit:

In the Circuit Court for Garrett County, Maryland.

No. 11, Criminal Trials, May Term, 1887.

STATE OF MARYLAND
vs.
MARSHALL RECKARD.

Be it remembered, that at the September Term, 1886 of said Court, Perry M. Stemple, Leonard Shartzer, Isaiah Boucher, Christian Soelters, William E. Broadwater, William McCabe, John A. Wolf, Alfred C. Brooke, Isaac V. Lansdale, Bazil Anderson, James H. Bevans, John T. Garey, Newton Guard, Lewis Popp, Michael Nathan, Anthony Layman, William S. Lantz, Daniel H. Durst, Gustavus Garringer, James W. White, Marcus M. Fazenbaker, Samuel Falkner and Jacob M. Boyer, good and lawful men of the County aforesaid, who being impannelled, sworn and charged to inquire for the State of Maryland, for the body of Garrett County, having withdrawn from the bar of the Court here, afterwards return and present to the Court here, a presentment in form following, towit:

In the Circuit Court for Garrett County, Md., September Term, 1886.

The Grand Inquest of the State of Maryland, for the body of Garrett County, on their oaths do present Marchell Reckford for the assault on Osten Brown with an axe with the intent to kill
1636 him, on September 2nd, 1886; on the testimony of Jacob Myers & Calvin Frazee.

P. M. STEMPLE, *Foreman.*

Whereupon, the said State of Maryland, by John W. Veitch, the State's Attorney for Garrett County, sued out of the Court here, the writ of the State of Maryland, *of capias ad respondendum*, against the said Marshall Reckard, directed to the Sheriff of Garrett County, in form following, towit:

Circuit Court for Garrett County, September Term, 1886.

You are hereby commanded to take Marshall Reckard and him have immediately before the Judges of the Circuit Court for said County, now sitting, to answer unto the State of Maryland of and concerning a certain charge of Assaulting Austin Brown with an axe with intent to kill him, as it is presented &c.

Hereof fail not at your peril.

W. H. TOWER, *Clerk.*

To the Sheriff of Garrett County, Sept. 16" 1886.

And thereupon the Sheriff of Garrett County aforesaid, towit: John H. Riley to whom the aforesaid writ was in form aforesaid directed, made return thereof to the Court here, thus endorsed, towit: Cepi and in jail, John H. Riley, Sheriff.

Whereupon, the said State of Maryland, by John W. Veitch, the State's Attorney for Garrett County, exhibits to the Grand Inquest now here impannelled sworn and charged to inquire &c., an indictment against the said Marshall Reckard, in form following, towit:

STATE OF MARYLAND,
Garrett County, Towit:

The jurors of the State of Maryland, for the body of Garrett County, do on their oath present, that Marshall Reckard, late of Garrett County aforesaid, on the second day of September, in the year of our Lord eighteen hundred and eighty six, with force and arms at Garrett County aforesaid, in and upon one Austin Brown in the peace of God and of the said State then being, and there did make an assault with an intent then and there him, the
1637 said Austin Brown, then and there feloniously, willfully, and of his own malice aforethought to kill and murder, to the great damage of the said Austin Brown; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Marshall Reckard on the said Second day of September, in the year eighteen hundred and eighty six, with force and arms at Garrett County, aforesaid, in and upon one Austin Brown in the peace of God and of the State then and there being, did make an assault, and him, the said Austin Brown then and there did beat, bruise, wound and ill-treat, so that his life was greatly despaired of, and other wrongs to him, the said Austin Brown then and there did, to the great damage of the said Austin Brown and against the peace, government and dignity of the State.

JOHN W. VEITCH,
The State's Attorney for Garrett County.

Whereupon, the said Grand Inquest having retired from the bar of the Court here, to inquire of and concerning the said indictment, afterwards return the said indictment to the Court here, thereon endorsed, towit:

"True Bill,

P. M. STEMPLE, *Foreman.*"

And thereupon further process of and upon the premises aforesaid was continued until the First Monday of May, in the year eighteen hundred and eighty seven.

Afterwards towit, on the 14th day of October, in the year 1886, the Traverser by Peddicord & Thayer, his attorneys, filed in Court here, the following petition, towit:

To the Honorable the Judges of the Circuit Court for Garrett County:

The petition of Marshall Reckard humbly shows to your Honors:

1st. That heretofore, towit, on the — day of September A. D.

1886, your petitioner was indicted in the Circuit Court for
1638 Garrett County, charged with an assault with intent to kill one Austin Brown.

2nd. That owing to the physical condition of said Brown on the date aforesaid, the case against your petitioner was continued until the next term of said Court, which convenes in May, 1887, and in default of $3,000 bail as fixed by your Honors, your petitioner was committed to the jail of said County where he has remained ever since.

3rd. That since the September Term of Court aforesaid, the said Brown physical condition has greatly improved, and that he is now up and about, and is able to do light work upon his farm, that said Brown is out of all danger from the effects of said wound, and in no further need of medical attendance for said wound. See physicians' certificate herewith filed and marked exhibit No. 1.

Your petitioner further shows that he is a poor man, and is unable to give the amount of bail as was required by your Honorable Court at the time aforesaid, and that your petitioner's wife is in a delicate condition is in destitute circumstances, and is entirely dependent upon your petitioner's daily labor for her support.

Your petitioner represents to your Honors that he will be able to give bail in a smaller amount, and therefore prays your Honors, that in view of the altered condition of the case, that a less and reasonable amount, as in your Honor's opinion may seem right and proper, be required as bail for your said petitioner's appearance at the next term of said Court to answer said charge.

And as in duty &c.

PEDDICORD & THAYER,
Att'ys for Pet'n.

Physicians' Certificates, marked Exhibit No. 1, referred to in the foregoing petition is in the words following, towit:

I hereby certify that on this the 11th day of October, A. D., 1886, before me, the subscriber, a Notary Public of the State of West Virginia, in and for Preston County, personally appeared Dr. A. S. Fichtner and made oath in due form of law that he is a regular practicing physician and a graduate of the College of Phy-
1639 sicians and Surgeons of Baltimore Maryland, that he first dressed the wound upon Austin Brown, who, as it is alleged was injured by one Marshall Reckard, and that he has this, the 10th day of October, 1886, examined said Brown, and that said Brown's condition is as follows: The wound is almost healed; the pulse and temperature of body normal, the appetite and digestion good, and that said Brown is now able to do light work, and that he considers said Brown out of all danger from the effects of said wound, and in no further need of medical attendance for said wound.

A. S. FICHTNER, *M. D.*

Subscribed and sworn to before the undersigned. Given under my hand & Official seal the day & year first & above written.

[SEAL OF NOTARY.] DANIEL TITCHENELL,
Notary Public.

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I hereby certify that I have been attending upon Austin Brown for an injury alleged to have been made by Marshall Reckard; that so far as I am able to judge said Brown is out of danger from said wound and have discontinued my visits to said Brown.

E. H. GLOTFELTY, *M. D.*

Whereupon it is ordered by the Court that the Clerk accept bail of the Traverser in the sum of $1,000.

And thereupon on the 19th day of October 1886 the said Marshall Reckard was recognized for his appearance at the May — Term, 1887, of said Court to be held on the first Monday thereof, in the sum of $1,000 with John E. Otto, Israel M. Frankhouser and Edmund Albright as sureties.

At which said first Monday of May, towit, in the year eighteen hundred and eighty seven, appear again in Court here the said State of Maryland, by John W. Veitch, its attorney, and the said Traverser, Marshall Reckard by Thomas J. Peddicord and Fred A. Thayer, his attorneys.

And the said Marshall Reckard, in his own proper person, filed in Court here, the following plea in abatement, towit:

1640 In the Circuit Court for Garrett County.

No. 11. Crim. Trials, May Term, 1887.

STATE OF MARYLAND
vs.
MARSHALL RECKARD.

Marshall Reckard, the Traverser in the above entitled cause, in his own proper person, comes and says, that this Court ought not to have or take further cognizance of the said supposed offence charged against him in the indictment filed in said cause, because he says, that the said supposed offence, if any were committed, was not committed within Garrett County, nor within the jurisdiction of this Court, but in the County of Preston, in the State of West Virginia. And this the said Traverser prays may be inquired of by the country.

his
MARSHALL RECKARD.
mark

Witness:
SAMUEL LAWTON.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify that on this sixth day of May, A. D. 1887, before me, the subscriber, Clerk of the Circuit Court for Garrett County, personally appeared Marshall Reckard, and made oath in due form of law that the aforegoing plea is true in substance and in fact.

W. H. TOWER, *Clerk.*

Upon which plea in abatement, the said State of Maryland, by its attorney aforesaid, joined issue.

And thereupon on the sixth day of May, in the year eighteen hundred and eighty seven, for trying the issue aforesaid, it is ordered by the Court here, that twenty persons from the panel of petit jurors returned to the Court here, by the Sheriff of Garrett County, be drawn by ballot, according to the Act of Assembly in such case made and provided, and thereupon the names of twenty persons being written upon two lists, one of said lists is delivered to the Counsel for the State of Maryland, and the other to the Counsel for the Traverser, and the Counsel for each of the said parties having stricken out four persons from said lists, thereupon the remaining twelve persons being called, come, that is to say: Thomas H. Bittinger, M. M. Ashby, William H. Poole, Thomas Harne, Arch. C. Hamill, James E. Moreland, John H. Rafter, Lorenzo D. Thrasher, George M. Mason, Andrew J. Harne, John Liston and James
1641 Poland, who being empannelled and sworn to say the truth in the premises, and who having heard, seen and fully understood all and singular the premises aforesaid, retired from the bar of the Court here to consider their verdict, afterwards returned and reported to the Court here that they find their verdict for the State and over rule the Traverser's plea in abatement.

Before the jurors aforesaid withdrew from the bar of the Court here to consider their verdict, the Traverser offered three prayers, all of which were rejected by the Court, and the State offered two prayers, the first of which was granted by the Court with modification and the second was substituted; to which ruling of the Court, the traverser excepted.

Traverser's Prayers.

1. The traverser by his counsel prays the Court to instruct the jury that if they find from all the evidence in this cause, that there was a line known as the old Maryland line, and that said old Maryland line had been surveyed prior to the year 1859, and that the entire territory of Md. and Garrett County lie east of said line, and shall further find that said line was recognized, acquiesced in and acted upon in the issuing of grants for lands by the States of Virginia and Maryland, respectively, as the boundary line between said States, and that the point or place where the alleged offence was committed is West of said line, then the jury may find for the defendant, unless the jury further find that the States aforesaid have concurrently laid out, ratified and adopted a line other than said Old Maryland Line. (Rejected.)

2. The defendant further prays the Court to instruct the jury that they cannot find for the State, unless they find from the evidence that the boundary line between the States of West Virginia and Maryland had been ascertained according to law before the alleged offence was committed, and that said offence was committed in Garrett County according to the line so established and ascertained by law. (Rejected.)

3. The defendant prays the Court further to instruct the jury that if they find from the evidence that a line was surveyed and
1642 marked in 1859 as the boundary line between the two States by concurrent acts of the Legislatures of Virginia and Maryland, that said proceedings are void and said acts a nullity, unless the jury find that the line so run has been adopted and ratified by the states of Maryland and Virginia according to the Act of 1852, Ch. 275, and their verdict must be for the defendant. (Rejected.)

State's Prayers as Modified, Substituted, and Granted.

1. The State of Maryland by its attorney, prays the Court to instruct the jury that in the issue joined upon the plea in abatement submitted by the Traverser in this case, the burden of proof is upon the Traverser, and it is incumbent upon him to show affirmatively that the place or point at which the offence charged in the indictment is charged to have been committed is not in Garrett County, Maryland, and unless he shall do so by such affirmative proof, the jury must find for the State of Maryland, notwithstanding the jury may further find that there have been and are disputes about the question as to the claims of the State of Maryland, to that territory between individuals in the neighborhood, in respect to the lands lying within said disputed territory. (Granted.)

2. And further instructs the jury that if they shall find from the evidence that the point or place at which the offence charged in the indictment was committed is East of the line as surveyed in 1859 by the Commissioners appointed by the State of Maryland & Virginia in conformity with the laws passed by the said States for that purpose, then the jury must find for the State upon the issue joined. (Granted.)

Afterwards, towit: On the 11th day of May, in the year eighteen hundred and eighty seven, the said Marshall Reckard, the Traverser aforesaid, was again placed at the bar of the Court here and asked how he — of the matter aforesaid in the indictment aforesaid above specified and charged upon him, will acquit himself, saith, that he is not guilty thereof, and thereof for good and evil he puts himself upon the country and John W. Veitch, Esquire, the State's Attorney for Garrett County, who for the said State of Maryland, in this behalf prosecuteth, doth the like.

1643 Whereupon for trying the issue thus joined, it is ordered by the Court here, that twenty persons from the panel of petit jurors returned to the Court here, by the Sheriff of Garrett County, be drawn by ballot, according to the Act of Assembly in such case made and provided, and thereupon the names of twenty persons being written upon two lists, one of said lists is delivered to the Counsel for the State of Maryland, and the other to the Counsel for the Traverser, and the Counsel for each of the said parties having stricken out four persons from said lists, thereupon the remaining twelve persons being called, come, that is to say: Francis B. Graham, Stephen Browning, Amos Green, John Close, C. H. Tillson, William

H. Poole, Thomas H. Bittinger, John C. Chaney, Isadore McKinzie, James E. Moreland, John H. Rafter and George M. Mason, who being empanneled and sworn to say the truth in the premises, and who having heard, seen and fully understood all and singular the premises aforesaid, retired from the bar of the Court here to consider their verdict, afterwards returned and reported to the Court here, that they find that the said Marshall Reckard is not guilty of the premises aforesaid as by the first count of indictment aforesaid is above specified and laid to his charge, but that he is guilty of the premises aforesaid as in the second count of the indictment aforesaid above specified and laid to his charge, in manner and form as by the said second count of the said indictment is above charged upon him.

Therefore it is considered by the Court here, that the said Marshall Reckard be imprisoned in the jail of the County aforesaid, for and during the term of sixty days.

Copy of Docket Entries.

In the Circuit Court for Garrett County, Maryland.

No. 11, Criminal Trials, May Term, 1887.

STATE OF MARYLAND
vs.
MARSHALL RECKARD.

1886, Sept. 16″. Assault with intent to kill. Presentment, Copy. Cepi & in jai-
Sept. 17″. Indictment, Copy. Continued.
Oct. 14″. Petition of Traverser and Ex. No. 1 Order of Court authorizing Clerk to accept bail in the sum of $1,000.
Oct. 19″. Recognized as per order of Court in the sum of $1,000 with John E. Otto, Israel M. Frankhouser and Edmund Albright, as security for apps. of Reckard at May Term, 1887.
1644 1887 May 6″. Plea in abatement filed. Issue joined.
1887 May 7″. Jury trial, jury sworn. The traverser offered 3 prayers and all of them rejected by the Court. The State offered 2 prayers, the first granted with modification by the Court and the second substituted. Traverser excepts to ruling of Court upon prayers. Verdict for State and plea in abatement overruled.
1887 May 11″. Plea not guilty—Jury trial, jury sworn.
1887 May 12″. Verdict not guilty on first count, but guilty on second count.
1887 May 17″. Sentenced by the Court to undergo an imprisonment in the County jail for sixty (60) days from this date.

STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the aforegoing is a true and complete transcript taken from the record of proceedings of the said Circuit Court for Garrett County, in the above entitled cause.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 19th day of July A. D., 1907.

[SEAL.] E. Z. TOWER, *Clerk.*

Endorsed: Transcript of record in the case of State of Maryland *vs.* Marshall Reckard. Exhibit "Austin Brown." Supreme Court U. S. No. 1 Original, Oct. Term, 1907. Maryland *v.* West Virginia. Filed Oct. 15, 1907.

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